IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.39 OF 2020

Appellant : (Ori. Claimant on R.A.) : Smt. Kamal wd/o Sandip Shinde,
Aged about 23 years, Occ. Household,
R/o Wakalwadi, Tq. Malegaon, Dist. Washim.

– Versus –

Respondents : (Ori. Respondents on R.A.) :

1) Dulichand s/o Hariprasadji Chawan,
Aged about 53 years, occ. Driver,
R/o Village Chayni, Tq. Kalapipal,
Dist. Shajapur (M.P.)

Matter is dismissed against Respondent No.2 in view of Reg(J) Order dated 02/04/2024)

2) Jasveer Singh Khanuja s/o Jagdishsingh Khanuja,
R/o Singh Carrying Corporation, 164, T.P. Nagar,
Indore, Tq. & Dist. Indore (M.P.)

3) United India Insurance Co. Ltd.,
Indore through it's Divisional Manager,
R/o Rajasthan Bhavan, Old Cotton Market, Akola,
Tq. & Dist. Akola.

4) Dilip s/o Nagoji Shinde,
Aged about 50 years, Occ. Labour,
R/o Wakalwadi, Tq. Malegaon, Dist. Washim.

5) Sau. Sugandhabai w/o Dilip Shinde,
Aged about 48 years, Occ. Labour,
R/o Wakalwadi, Tq. Malegaon, Dist. Washim.

=-=
Ms. Aastha Sharma h/f Mr. P.R. Agrawal, Advocate for the Appellant.
Mrs. Anita Mategaonkar, Advocate for Respondent No.3.
Mr. A.S. Ambadkar, Advocate for Respondent Nos.4 and 5.
=-=

CORAM : M.W. CHANDWANI, J.
DATE : 12th SEPTEMBER, 2024.

ORAL JUDGMENT :

With the consent of learned Counsels for the parties, the appeal is taken up for final hearing.

02. **Admit**.

03. Correctness of the award dated 23/02/2017 passed by the Motor Accident Claims Tribunal, Akola *(hereinafter referred to as "Tribunal" for short)* in Claim Petition No.40/2016 is questioned in this appeal, whereby the Tribunal has granted compensation of Rs.5,34,000/- along with interest at the rate of 6% per annum to the appellant and respondent Nos.4 and 5 on account of death of deceased Sandip Shinde in a vehicular accident that occurred on 21/12/2015.

04. The wife of the deceased has filed this appeal for enhancement in compensation mainly on the ground that notional income at the rate of Rs.3000/- per month was assessed by the Tribunal instead of Rs.6,000/- per month and the future prospects, consortium as well as other conventional benefits have not been granted.

05. The contention is that the deceased was a labourer and aged about 26 years at the time of his death, but while assessing notional income of the deceased at Rs.3,000/- per month, the Tribunal calculated the income on the basis of Rs.100/- per day, which is on the lower side. According to the learned Counsel for the appellant, the deceased would have been earning at

least Rs.200/- per day, which was not considered by the Tribunal. To buttress her submission, she seeks to rely on the decision of this Court in the case of ***Kavita wd/o Ravindra Gurnule and another vs. Maharashtra State Roads Transport Corporation and others***[1], wherein this Court has considered notional income of the deceased, who died in the year 2012, at Rs.6,000/- per month.

06. The learned Counsel appearing for the Insurance Company objects the appeal on the ground that the Tribunal has rightly assessed the notional income of the deceased at Rs.3,000/- per month, since the deceased was a labourer and he may not be getting work regularly and therefore, notional income at Rs.6,000/- claimed by the appellant will be on the higher side.

07. It is to be noted that the accident occurred at the end of year 2015. Considering cost inflation of the year 2016, the income of an unskilled labourer cannot be less than Rs.200/- per day. In my opinion, the notional income of Rs.3,000/- per month, i.e. Rs.100/- per day, for an unskilled labourer is too less. I, therefore, find substance in the argument of the learned Counsel for the appellant that the notional income should be fixed at the rate of Rs.6,000/- per month. So far as the submission of the learned Counsel for the respondent that the deceased may not be getting work on a

1 2019(6) ALL.M.R.323

daily basis is concerned, since we are assessing the income on notional basis, the objection does not sustain.

08. Needless to mention, according to the decision of the Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[2], the claimants are entitled towards future prospects at the rate of 40%, since the deceased was below the age of 40 years. Apart from that, respondent Nos. 4 and 5 are entitled for spousal consortium and filial consortium at the rate of Rs.40,000/-. That apart, the appellant and respondent Nos.4 and 5 are also entitled towards loss of estate and funeral expenses at Rs.15,000/- each. Accordingly, the appellant and respondent Nos.4 and 5 are entitled to the following compensation:

1.	Notional Income of the Deceased	Rs.	6,000/-
2.	Annual income of the deceased (Rs.6000/- x 12)	Rs.	72,000/-
3.	**Less** – 1/3rd deduction as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121(Rs.72,000 – Rs.24,000)	(-) Rs.	48,000/-
4.	**Add** – 40% future prospects as per the judgment of National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680	(+) Rs.	19,200/-
5.	Salary for multiplier	Rs.	67,200/-
6.	**Multiplier** of 17 as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121, applicable for the age group of 26 to 30 (Rs. 67,200 x 17) (Loss of Dependency)	(x) Rs.	11,42,400/-

2 (2017) 16 SCC 680

7.	**Add** : Loss of Consortium : Rs.40,000/- for each claimant as per the judgment of Magma General Insurance Co. Ltd. vs. Nanu Ram (2018) 18 SCC 130 followed in United India Insurance Co. Ltd. vs. Satinder Kaur – AIR 2020 (SC) 3076- (Rs.40,000/- x 3)	(+) Rs.	1,20,000/-
8.	**Add** : Loss of Estate	(+) Rs.	15,000/-
9.	**Add** : Funeral Expenses	(+) Rs.	15,000/-
10.	Total compensation payable to the claimants (Rs.11,,42,400/- + Rs.1,20,000/- + Rs.15,000/- + Rs.15,000/-)	Rs.	12,92,400/-

09. In view of the above, the appeal is partly allowed. Needless to mention that considering the age of the widow and respondent Nos.4 and 5, out of the compensation amount, Rs.5.00 lakhs be given to the appellant and remaining balance amount along with interest accrued thereon shall be equally distributed between respondent Nos.4 and 5.

10. Respondent No.3 is directed to deposit the enhanced compensation along with interest at the rate of 6% per annum thereon from the date of claim petition till realization of the amount with the Tribunal within six weeks from today.

11. Decree be drawn up accordingly. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

**sandesh*