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

FIRST APPEAL NO.1198 OF 2023

National Insurance Company Ltd.
Through its Divisional Manager,
R/o M.G. Road, Opp. Open Air Theatre,
Akola, Through its Regional Manager,
Regional Office, 5th Floor, Fidvi Towers,
Sadar, Nagpur. **...APPELLANT**
(Orgi. Resp. No.3)
(On R.A.)

...V E R S U S...

1. Pragati Wd/o Ajaykumar Tayade,
Aged about 31 years, Occ: Pvt. Service,

2. Ashan S/o Ajaykumar Tayade,
Aged about 5 years, Occ: Nil,
Respondent no.2 being minor through its
natural guardian mother respondent no.1.

3. Chandrabhaga Wd/o Shamrao Tayade,
Aged about 69 years, Occ: Nil,

All R/o C/o Nikhil Ajabrao Dongre,
Yashwant Nagar, Washim Bye Pass,
Akola, Dist. Akola. (Orig.Pet. Nos.1 to 3)
(All on R.A.)

4. Saddam Husain S/o Aziz Khan,
Age. Adult, Occ: Driver,
R/o Near Nawab Pura Majid,
Nawab Pura, Old City, Akola. (Orig. Resp. No.1)
(On R.A.)

5. Navinkumar S/o Arunkumar Pethe,
Age Adult, Occ: Owner,
R/o The Best Petrol Pump,
Chandru Bazar Road, Morshi,
Tq. Morshi, Dist. Amravati. (Orig. Resp. No.2)
(On R.A.)

...RESPONDENTS

WITH

FIRST APPEAL NO.881 OF 2024

1. Pragati Wd/o Ajaykumar Tayade,
   Aged about 31 years, Occ: Pvt. Service,

2. Ashan S/o Ajaykumar Tayade,
   Aged about 5 years, Occ: Minor,
   Appellant no.2 minor, through natural guardian
   mother Appellant no.1.
   Both R/o C/o Nikhil Ajabrao Dongre,
   Yashwant Nagar, Washim Bye Pass,
   Akola, Dist. Akola. **...APPELLANTS**
   (Claimants)

...V E R S U S...

1. Saddam Husain S/o Aziz Khan,
   Age. Adult, Occ: Driver,
   R/o Near Nawab Pura Majid,
   Nawab Pura, Old City, Akola.

2. Navinkumar S/o Arunkumar Pethe,
   Age Adult, Occ: Owner,
   R/o The Best Petrol Pump,
   Chandru Bazar Road, Morshi,
   Tq. Morshi, Dist. Amravati.

3. National Insurance Company Ltd.
   Akola through Divisional Manager,
   R/o M.G. Road, Opp. Open Air Theatre, Akola.

4. Chandrabhaga Wd/o Shamrao Dongre,
   Aged about 69 years, Occ: Nil,
   R/o C/o Sunil Shamrao Tayade, Bodhipura,
   Ukali Bazar, Tq. Samgrampur,
   Dist. Buldhana. **...RESPONDENTS**

Mr. C.C. Anthony, Advocate for appellant in FA No.1198/2023 and for respondent no.3 in FA No.881/2024.
Mr. S.D. Chopde, Advocate for respondent no.1 & 2 in FA No.1198/2023 and for appellants in FA No.881/2024.
Mr. S.D. Chande, Advocate for respondent no.3 in FA No.1198/2023 and for respondent no.4 in FA No.881/2024.
Mr. D.P. Dapurkar, Advocate for respondent no.5 in FA No.1198/2023.

CORAM:- M.W. CHANDWANI, J.
DATE :- 23.08.2024.

ORAL JUDGMENT:

1. Both appeals arise out of the same impugned judgment and award dated 17.08.2023 passed by the learned Motor Accident Claims Tribunal, Akola (for short "Tribunal) in M.A.C.P. No.4/2019. The both appeals are being disposed of by this common judgment.

First Appeal No.1198/2023 is filed by the Insurance Company mainly on the ground that deduction towards personal expenses has erroneously been made as one-fourth (1/4th) of the assessed income of deceased, whereas, wife and son of the deceased have filed First Appeal (Stamp) No.24687/2023 on the ground that apportionment amongst dependents has been improperly done by the Tribunal.

2. Mr. Anthony, learned counsel for the appellant-Insurance Company, drew my attention to paragraph 20 of the impugned award, wherein the Tribunal, though, has rightly considered that the dependent family members of the deceased are between the range of 2 to 3, infact it is a matter of record that there are 3 dependents, however, while deducting the personal expenses, the Tribunal has erroneously directed that one-fourth (1/4th) amount of the assessed income of the deceased should be deducted towards personal expenses, which is in teeth of the observations made by the Supreme Court in the case of *Sarla Verma (Smt) Vs. Delhi Transport Corporation*[1]. Rather, the Tribunal has relied on the very same judgment and directed that one-fourth(1/4th) amount of assessed income should be deducted towards personal expenses. It appears that the Tribunal has misread the judgment. In para 30 of the decision in the case of *Sarla* (supra), in univocal terms the Supreme Court has held that where number of dependent family members is 2 to 3 then one-third (1/3rd) should be deducted towards personal expenses. The relevant para of the decision is reproduced here:

> *"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 Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this 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 member 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."*

---
1 **(2009) 6 SCC 121 : AIR 2009 SC 3104**

3. The learned counsel for the respondents fairly conceded this aspect, therefore, the said finding is required to be set aside being factually incorrect. Therefore, one-third (1/3rd) of assessed income of deceased ought to have been directed to be deducted towards personal expenses. Therefore, First Appeal No.1198 of 2023 is allowed to that extent.

4. In view of this, Pragati Wd/o Ajaykumar Tayade (wife), Ashan S/o Ajaykumar Tayade (son) and Chandrabhaga Wd/o Shamrao Tayade (mother), the dependents of the deceased, are entitled to the following compensation :-

1.	Monthly notional income of the deceased fixed by the Tribunal	Rs.	29,192/-
2.	Annual income of the deceased (Rs.29,192/- x 12)	Rs.	3,50,304/-
3.	Since the deceased was below the age of 40 years at the time of his death. **Add** – 50% future prospects as per the judgment of National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680	(+) Rs.	1,75,152/-
		Rs.	5,25,456/-
4.	**Less** – 1/3rd deduction as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121	(-) Rs.	1,75,152/-
5.	Salary for multiplier	Rs.	3,50,304/-

6.	**Multiplier** of 16 as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121, applicable for the age groups of 31 to 35 years (Rs.3,50,304 x 16)	(x) Rs.	56,04,864/-
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 (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.**	**57,54,864/-**

5. Turning to the appeal filed by the wife and son of the deceased i.e. First Appeal Stamp No. 24687/2023.

6. Mr. S.D. Chopde, learned counsel appearing on behalf of the wife and son, submits that the apportionment is inappropriately done by the learned Tribunal. According to him, wife - Pragati Tayade is aged about 31 years old and son-Ashan Tayade is only 5 years old, whereas mother – Chandrabhaga Tayade is aged about 70 years old. Therefore, remaining life span of mother is comparatively very short than the life span of the wife and son of the deceased. In that circumstances, the Tribunal ought to have granted not more than 10% amount of the award to the mother of the deceased, which according to him is more than sufficient. To buttress his submissions, he seeks to rely on the decision of this Court in the case of *Laxman Hekmati Jhodage and another Vs. SDH. Logistics Prop and others*[1], wherein in paras 17 and 18, this Court while dispelling the arguments advanced on behalf of the parents dismissed the appeal by holding that the apportionment done by the Tribunal granting approximately 5% of the award to each of the parents is correct. The paras 17 and 18 are reproduced here:

> *"17. However, it cannot be ignored that claimant No.1 being young woman and claimant Nos.2 and 3 being minor children of the deceased, have very long life span in future. Claimant No.1 has to maintain her minor children as well as she has to look after the expenses of their future education as well as marriages. Thus, naturally, considering the life span of claimant Nos.1 to 3 in future and their reasonable needs, they are definitely entitled to major portion of the compensation. Even same view was taken by this Court in First Appeal No.2879/2015, relied upon by learned counsel for the appellants/parents.*
>
> *18. On the other hand, remaining life span of both the parents is obviously comparatively very short than life span of claimant Nos.1 to 3. In the circumstances, if proportionately less share is given by the Tribunal to the old parents of the deceased, the same cannot be faulted. However, after considering the substantial enhancement awarded by this Court in the total compensation amount, there should be reasonable addition in the share of claimant Nos.4 and 5 in the compensation amount. Thus, I hold that out of total compensation of Rs.62,83,228/-, claimant No.4 Laxman s/o Hekmati Jhodage is entitled to Rs.2,50,000/- and claimant No.5 Rukhminbai w/o Laxman Jhodage is entitled to Rs.2,50,000/-. The remaining compensation amount shall be equally apportioned in between claimant Nos.1,2 and 3.*

1 **First Appeal No.2626/2018 (Aurangbad Bench)**

> *Claimant Nos.2 and 3 being minors till today, the compensation amount of their respective share shall be invested in fixed deposit till they attain majority, with liberty to receive quarterly accrued interest by their mother i.e. claimant No.1. In the circumstances, I hold that First Appeal No.2626/2018 and Cross-Objection (St.) No.4760/2019 deserve to be partly allowed."*

7. It is a matter of record, rather, an undisputed fact that wife is aged about 31 years old and son of the deceased is 5 years old and they have a very long span of time as compared to the mother of the deceased. The wife has to maintain and look after educational expenses of the minor son, therefore, I find substance in the arguments of the learned counsel for the wife and son, that the direction of distribution of amount of award equally amongst wife, son and mother of the deceased is incorrectly done by the Tribunal, which requires correction in this appeal.

8. Considering the age of the mother, who is 70 years old, 10% of amount of the award is just and proper to be given to the mother of the deceased. Therefore, the appeal is allowed in the above said terms.

9. In view of the above, both appeals are allowed. The award needs to be modified as under:

10. The respondent nos.1 to 3, in First Appeal Stamp No.24687/2023, shall jointly and severally be liable to pay an amount of Rs.57,54,864/- alongwith interest at the rate of 6% per annum from the date of claim petition till the date on which the amount is deposited in this Court.

11. The mother of the deceased - Chandrabhaga Wd/o Shamrao Tayade shall be entitled to 10% of the decreetal amount alongwith accrued interest thereon. Remaining decreetal amount shall be divided equally between Pragati Wd/o Ajaykumar Tayade (wife of deceased), Ashan S/o Ajaykumar Tayade (son of deceased). Out of the share of Pragati Tayade (wife of the deceased), 50% amount shall be deposited in Fixed Deposit in any Nationalized Bank in her name for a period of two years and remaining 50% alongwith accrued interest shall be paid to her. Decreetal amount (alongwith accrued interest thereon) falling in the share of Ashan Tayade shall be deposited in Fixed Deposit in any Nationalized Bank till he attains the age of majority with a provision of withdrawal of monthly interest on the said amount to be utilized towards maintenance of minor.

12. The excess amount alongwith accrued interest thereon, if any, deposited by the Insurance Company shall be refunded.

13. Rest of the impugned judgment and award of the Tribunal shall remain intact.

14. Both the appeals are accordingly disposed of in above terms with no order as to costs.

15. Award be drawn accordingly.

JUDGE

Wagh