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

FIRST APPEAL NO.661 OF 2024

Appellant : (On R.A. Ori. Resp. No.3) : The New India Assurance Co. Ltd.,
Branch at Dutta Chowk at Yavatmal,
Through its Regional Manager,
Regional Office at Nagpur.
Ryan Building, Near Kasturchand Park, Nagpur.

– Versus –

Respondents : :

(Ori. Applicant No.1 on R.A.)
1. Smt. Kavita wd/o Suresh Hajare,
Aged about 34 years,
Occupation : Household Work.

(Ori. Applicant No.2 on R.A.)
2. Mahesh s/o Suresh Hajare,
Aged about 23 years, Occupation Education.

(Ori. Applicant No.3 on R.A.)
3. Amol s/o Suresh Hajare,
Aged about 21 years, Occupation Education.

(Ori. Applicant No.4 on R.A.)
4. Ku. Mukta d/o Suresh Hajare,
Aged about 12 years, Occupation Education.

Being minor, through her guardian mother –
Kavita Suresh Hajare

(Ori. Applicant No.5 on R.A.)
5. Smt. Jayavantabai wd/o Kisanrao Hajare,
Aged about 65 years.

Respondent Nos.1 to 5 are residents of Jarang,
P.S. Shivani, Taluka Ghatanji, District Yavatmal.

(Ori. Resp. No.1 on R.A.)
6. Juned Noor s/o Ibrahim Noor,
Aged 34 years, Occupation : Driver of
Mahindra Bolero Pick Up MH-29-T-6910,
R/o Nehru Nagar, Near New Bus Stand, Ghatanji,
Dist. Yavatmal.

(Ori. Resp. No.2 on R.A.)
7. Mohammed Arif s/o Ibrahim Noor,
Aged major, Occupation - Transport,
Residence of Nawaz Kulfi, Opposite Bus Stand,
Nehru Nagar, Ghatanji, District Yavatmal.

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Mr. S.A. Marathe, Advocate for the Appellant.
Mr. V.D. Awachat, Advocate for Respondent Nos.1 to 5.
Mr. Yashraj Kinkhede, Advocate for Respondent Nos.6 & 7.
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CORAM : M.W. CHANDWANI, J.
DATE : 21st AUGUST, 2024.

ORAL JUDGMENT :

Heard the learned Counsel for the parties.

02. **Admit**.

03. The only two points are raised in this appeal. Firstly, grant of future prospects at the rate of 45% instead of 30% on the assessed income and secondly, while assessing the income, professional tax has not been deducted.

04. Mr. Marathe, learned Counsel for the appellant submits that the deceased at the time of his death was 45 years old and in wake of the decision of the ***National Insurance Company Limited vs. Pranay Sethi and Ors. - [2017] 13 S.C.R. 100,*** the Tribunal wrongly granted future prospects at the rate of 45%, which ought to have been granted at the rate of 30% on the assessed income of the deceased. Needless to mention, in paragraph 61(iii), the Supreme Court has observed as under :

> *"(iii) 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."*

05. Insofar as the deduction of professional tax from the income is concerned, the learned Counsel for the appellant seeks to rely on the decision of the Supreme Court in the case of ***National Insurance Co. Ltd. vs. Indira Srivastava and others – (2008) 2 SCC 763,*** wherein the Supreme Court in paragraph 19 has observed thus :

> *"19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contra-distinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."*

06. Evidently, the deceased was aged about 45 years at the time of his death. Therefore, as observed by the Supreme Court in the decision of *Pranay Sethi (supra)*, 30% of the total assessed income ought to have been granted towards future prospects, but the Tribunal erroneously granted 45% towards future prospects. This is required to be corrected. Further, while assessing the income of the deceased as Rs.18,792/- per month, the Tribunal did not deduct the amount of Rs.300/- per month towards the professional

tax. The said position has not been disputed by the learned Counsel for the claimants/respondents. Therefore, the respondents/claimants are entitled as under :

Sr.No.	Head	Amount
1.	Monthly income of the deceased.	Rs. 18,492/-
2.	Future Prospect (30%)	Rs. 5548/-
3.	Deduction towards Personal Expenditure 1/4th of Monthly Income (24040-6010)	Rs. 18,030/-
4.	Total Income Per Annum (18030*12)	Rs. 2,16,360/-
5.	Multiplier (14)	
6.	Loss of Future Income (216360*14)	Rs. 30,29,040/-
7.	Funeral Expenses	Rs. 15,000/-
8.	Loss of Estate.	Rs. 15,000/-
9.	Loss of Filial Consortium	Rs. 15,000/-
10.	Total Compensation awarded	Rs. 32,59,040/-

07. In that view of the matter, the appeal is partly allowed in the aforesaid terms. Accordingly, the impugned award is modified as under.

I. The appellant and respondent Nos.6 and 7 are jointly and severally liable to pay a sum of Rs.32,59,040/- (Rupees Thirty Two Lakhs Fifty Nine Thousand and Forty only) to the claimant/respondent Nos.1 to 5 (including 'no fault liability') as compensation under Section 166 of the Motor Vehicles Act along with interest at the rate of 6% per annum from the date of the petition till deposit of the decretal amount.

II. Needless to mention that respondent Nos.1 to 5 shall be entitled to the aforesaid amount along with interest accrued thereon from the date of filing of the claim petition.

III. Excess amount, if any, be refunded to the appellant and respondent Nos.6 and 7, proportionately.

IV. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

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