



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 3593 OF 2019**

United India Insurance Company Ltd.,

Through its Authorized Signatory / Divisional Manager,
Divisional Office No.I, H. No.4/5/76, V. P. Chowk,
Osmanpura, Aurangabad
Tq. & Dist. Aurangabad - 431 001

....Appellant
[Original Respondent No.4]

VERSUS

1. Smt. Puja Namdeo Ghuge
Age: 22 Years, Occupation : Household

2. Praniti D/o Namdeo Ghuge
Age : 2 Years, Occu. Nil

[Being Minor U/g of her mother
i.e. Respondent No.1]

3. Smt. Pushpabai Jalindar Ghuge
Age : 52 Years, Occu. Nil

All R/o. Ghotan, Tq. Shevgaon,
Dist. Ahmednagar

4. Rameshwar Dadasaheb Shelke
Age : 35 Years, Occu. Driver
R/o. Kare Takali, Tq. Shevgaon,
Dist. Ahmednagar

5. Dvarka Kakasaheb Mogal
Age : Major, Occu. Owner,
R/o. Nilajgaon, Tq. Paithan,
Dist. Aurangabad

6. Kakasaheb Janardhan Mogal [Dead]

.....Respondents
[Resp. Nos.1 to 3 - Orig. Claimants &
Resp. No.4 to 6-Orig. Resp. No.1 to 3]

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Appearance :

Mr. S. R. Bodade, Advocate for the Appellant - Insurance Company
Mr. R. B. Dhakane, Advocate for Respondent Nos.1 to 3
Mr. M. B. Ubale, Advocate for Respondent Nos.4 and 5

.....

AND
FIRST APPEAL NO.888 OF 2023

1. Smt. Puja Namdeo Ghuge
Age - 20 years, Occup - Household,
R/o Ghotan, Taq - Shevgaon,
Dist - Ahmednagar
2. Kum. Praniti Namdeo Ghuge
Age - 11 months, occup - ,
R/o Ghotan, Taq - Shevgaon,
Dist - Ahmednagar.
[U G of the Appellant No.1]
3. Smt. Pushpabai Jalindar Ghuge
Age - 50 years, occup - Nil,
R/o Ghotan, Taq - Shevgaon,
Dist - Ahmednagar.

.... Appellants
[Orig. Claimants]

VERSUS

1. United India Insurance Company Ltd.
Through its Manager,
Osmanpura, Aurangabad
2. Rameshwar Dadasaheb Shelke
Age - 34 years, Occup - Driver,
R/o Karhe Takali, Taq Shevgaon,
Dist - Ahmednagar
3. Smt. Dwarka Kakasaheb Mogal
Age - Major, Occup - Owner,
R/o Nilajgaon, Taq - Paithan,
Dist. - Aurangabad
4. Shri. Kakasaheb Janardhan Mogal [died]
[Through Legal heir, i.e. respon. No.3]

.....Respondents
[Orig. Respondents]

.....

Appearance : -

Mr. R. B. Dhakane, Advocate for the Appellants
Mr. S. R. Bodade, Advocate for Respondent No.1
Mr. M. B. Ubale, Advocate for Respondent Nos.2 and 3

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CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 02/04/2025
PRONOUNCED ON : 21/04/2025

COMMON JUDGMENT :-

1. Both the Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as the 'M.V. Act']. The First Appeal No.3593/2019 is filed by the Insurance Company against the Judgment and Order / Award dated 27/03/2019, passed by the learned Motor Accident Claim Tribunal, Aurangabad, [hereinafter referred to as the 'learned Tribunal'] in the Motor Accident Claim Petition [For short the 'MACP'] No.407/2018, partly allowing the MACP and directing the Insurance Company, Owner and Driver to pay the compensation of Rs.77,28,789/- [Rupees Seventy Seven Lakhs Twenty Eight Thousand Seven Hundred Eighty Nine Only], jointly and severally to the Claimants with interest @ 9% from the date of filing of the Claim Petition till its realization. The First Appeal No.888/2023 is filed by the Claimants for enhance compensation. Common submission are advanced by both the sides. Hence, both the Appeals are decided by this Common Judgment. The parties are referred as per their nomenclature / position in the MACP.

2. The facts giving rise to the present Appeals are as under :-

[I] The Claimants filed the above referred MACP before the learned Tribunal with the contention that, they were the widow,

minor daughter and mother, respectively of Namdeo Jalindar Ghuge [hereinafter referred to as the 'Deceased']. They were resident of Village Ghotan, Taluka Shevgaon, District Ahmednagar. The Deceased was working in the Central Reserve Police Force [hereinafter referred to as 'CRPF'] at Srinagar, Jammu and Kashmir, having monthly salary of Rs.42,619/-. On 12/05/2018, when the Deceased and his friend were returning to the Village on a motorcycle from Paithan to Shevgaon road in moderate speed from the correct side of the road and reached near Open Prison, Paithan around 04:30 p.m., a Tractor bearing No. MH-20-CR-4863, which was coming from the opposite direction in a high speed and in rash and negligent manner, gave dash to the motorcycle, on which, the Deceased and his friend were travelling. Due to the said motor vehicular Accident, the Deceased and his friend succumbed to the injuries. The Accident was reported to the Paithan Police Station and Crime No.165/2018 came to be registered for the offence punishable under Sections 279, 304-A of the Indian Penal Code, 1860 [hereinafter referred to as 'I.P.C'] and Section 134 /177 of the M.V. Act against the Driver of said Tractor.

[II] The Claimants being the Dependents/Legal Representatives of the Deceased, claimed the compensation of Rs.1,00,00,000/- [Rupees One Crore] against the Insurance Company, the Owner and the Driver of the said Tractor. The MACP was resisted / contested by the Insurance Company by filing Written Statement at Exhibit-20 and by the Owner and Driver of the said Tractor by filing joint Written Statement at Exhibit-27. They denied the case of Claimants put-forth before the learned Tribunal. They denied the involvement of the said Tractor in the Accident on the ground that, the Crime was registered against the unknown vehicle. They denied the rash and negligent driving of the said Tractor. They denied the income of Deceased and prayed to dismiss the MACP.

[III] The learned Tribunal framed the issues at Exhibit-18. In support of the MACP, the widow of Deceased examined herself by filing Evidence Affidavit at Exhibit - 23. She was cross- examined by the learned Advocate for the Insurance Company and the learned Advocate for the Owner and Driver of the said Tractor. The Claimants brought on record the Police Papers, the copies of Registration Certificate and Insurance Certificate of the Tractor and the copy of Driving Licence of the Tractor Driver. The Claimants examined the person from the Office of Director, CRPF, Delhi as Witness No.2 at Exhibit - 46 in respect of Service details of the Deceased, who was cross-examined by the learned Advocate for the Insurance Company. The copies of Service Papers of the Deceased were brought on record. The learned Tribunal decided the MACP by the impugned Judgment and Award.

3. Heard the learned Advocate for the Insurance Company, the learned Advocate for the Claimants and the learned Advocate for the Owner and Driver of the said Tractor. Perused the evidence available on record.

4. It is submitted by the learned Advocate for the Insurance Company that, the widow of Deceased was not the eyewitness to the Accident and the Claimants did not examine the eyewitness to the Accident. The involvement of the said Tractor, which was insured with the Insurance Company, was in dispute. The Report was lodged against the unknown vehicle. It was a hit and run case. The Service Papers brought on record by the witness examined by the Claimants, were not the Original and Certificate under Section 65

[B] of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act'] was not brought on record. The Claimants received the amount from the Employer from the Risk Fund, GIS and Leave Encashment, and that amount ought to have been considered and deducted by the learned Tribunal from the compensation amount. Witness No.2 examined by the Claimants was not authorized to depose before the learned Tribunal. The Last Pay Certificate of the Deceased was of the period after the death and, therefore, it will not be helpful to the Claimants. The Deceased was not holding a valid and effective Driving Licence and was not wearing helmet at the time of Accident, as required under the provisions of the M.V Act and, therefore, the Deceased had contributed to the Accident. The witnesses, whose statements were recorded by the Police, were the interested witnesses. The interest awarded by the learned Tribunal was on higher side. The defence of the Insurance Company was curtailed by not allowing the examination of the Investigating Officer. Hence, the Appeal filed by the Insurance Company be allowed and the Appeal filed by the Claimants be dismissed. In support of his submissions, he relied on the Judgments, which are considered in the later part of this Judgment.

5. It is submitted by the learned Advocate for the Claimants that, the Insurance Company failed to prove that, the Accident was

the result of contributory negligence. Only averments are not sufficient and no evidence was led by the Insurance Company. The Claimants have established their case by examining the witness. The Accident was between [2] two vehicles and the Deceased was a third party and so, non wearing of helmet and no Licence with the Deceased cannot be the issues. The Service Papers brought on record were the Public Documents and were proved by examining the witness. No objection was raised when the said documents were exhibited. The learned Tribunal ought not to have deducted the Professional Tax from the salary of Deceased and have deducted more amount towards Income Tax from the actual amount. The Consortium is not granted to the Claimants. Hence, the Appeal filed by the Claimants be allowed and the Appeal filed by the Insurance Company be dismissed . In support of his contentions, he relied on the Judgments, which are considered in the later part of this Judgment.

6. It is submitted by the learned Advocate for the Owner and Driver of the said Tractor that, the said Tractor was validly insured with the Insurance Company and the same is clear from the observations made in the impugned Judgment and Award.

7. Before advertng to the facts, circumstances and the evidence in the case at hand, the Judgments cited by both the sides are considered.

[I] Judgments cited by the learned Advocate for the Insurance Company

[a] **SIBY Paul Vs. Praveen Kumar ; LAWS [KER] - 2008-9-56 dated September 03, 2008**, wherein, the provision of Section 129 of the M.V. Act regarding wearing of protective head gear by those riding two wheeler is considered. It is observed that, it was for the learned Tribunal to consider whether in a case of Claim of compensation for death or injury of Drivers or Pillion Riders of two wheelers they were wearing helmet at the time of Accident and if not whether wearing of helmet would have prevented the death or injury or reduced the impact of the injury and if the same should be reckoned as an aspect of contributory negligence for reducing the compensation amount. Any claim made by Riders about wearing of helmet at the time of Accident should be critically examined and if found bogus, the same should be rejected. It is further observed that, in fact the want of helmet for the Rider may not be contributory to the Accident. However, the use of helmet would prevent Head Injury or at least reduce the impact of the injury in the event of Accident for the Driver and Pillion Rider of the bike or two wheeler.

[b] **Meera Sidharth Kambli Vs. Viraj Ekawade ; LAWS [BOM]-2015-4-59 dated April 18, 2015**, wherein, the negligence of Driver of the vehicle involved in the Accident was not proved and, the

decision of the learned Tribunal holding that, the Claimant was not entitled to receive any compensation, was upheld.

[c] **Pukh Raj Bumb Vs. Jagannath Atchut Naik ; LAWS [BOM]-2013-7-46**, wherein, the Claimant had miserably failed to prove that, the Accident occurred due to rash and negligent driving of the car involved in the Accident and it was held that, the Claimant was not entitled to receive any compensation on the ground of injuries resulting in permanent disability. It is also observed that, strict proof of the Accident was not required to be given by the Claimant and the Claimant can prove the case by preponderance of probability.

[d] **New India Assurance Company Ltd. Vs. Ashalata Suryakant Patil and Others, in First Appeal No.2829/2015 [Unreported]**, wherein, the principles applicable to the cases for compensation under the M.V. Act came to be reiterated as ; [i] Only on account of technicalities the Claim Petition cannot be defeated. [ii] Strict proof of the Accident by particular vehicle in a particular manner is not required. [iii] Standard of proof beyond reasonable doubt cannot be applied. [iv] Evidence is to be appreciated by applying the principle of preponderance of probability. [v] Absence of name of Driver and number of motor vehicle involved in the Accident, is not fatal in every case. [vi] Statement of witness recorded under Section 161 of the Code of Criminal Procedure could not be read, and therefore,

no relevance or reference can be attributed to it to accelerate the claim canvassed. On the facts of the case, it was held that, the involvement of offending vehicle in the Accident was not established.

[e] **Shabbeer Khan Vs. Gaurav Sharma and Another; 2015 [4] T.A.C. 439 [Raj.]**, wherein, by considering the delay in lodging the FIR, it was found that, the explanation for delay given by the Claimant was not acceptable, admission of offence by the Owner of car was not held to be of any assistance to the Claimant and it was held that, the finding of Criminal Court was not binding upon the learned Tribunal and the Claimant therein failed to prove that the Accident occurred with a particular offending vehicle.

[f] **Bajaj Allianz General Insurance Co. Ltd., Aurangabad Vs. Meera W/o Raju Choudhary and Others ; 2014 [6] Mh.L.J.**, wherein, the Appeal filed by the Insurance Company was allowed, as Claimants therein failed to establish the involvement of the vehicle insured with the Appellant, in the Accident.

[g] **Faridabegum S/o Shaikh Yousuf Vs. Daulat Khan S/o Sardar Kjan [died] through L.Rs. ; 2014 [6] Mh.L.J.**, wherein, it was observed that, the involvement of the Truck in the Accident was not proved.

[h] **Anil and Others Vs. New India Assurance Company Ltd and others; 2018 [5] Mh.L.J**, wherein, it is observed that, the learned Tribunal failed to notice crucial aspects of the case which had bearing on the question as to whether the death of Deceased therein was caused as a result of the Accident caused by the Tractor. Each of the circumstances relied upon by the High Court were germane to the ultimate conclusion that a false case was set up to support a Claim for compensation and the Appellants were not able to displace the careful analysis of the evidence by the High Court and the findings, which were arrived at.

[i] **Noorjadi Khatoon and Another Vs. Pintu Yadav and Others ; 2015 [3] T.A.C 496 [Del.]**, wherein, it was held that, the amount paid by the employer under any group personal Accident policy towards Accidental death was liable to be deducted from the amount of compensation.

[j] **Oriental Insurance Co. Ltd. Vs. Meena Variyal and Others, in Civil Appeal No.5825/2006 decided on 02/04/2007**, wherein, the Regional Manager of the Company, which was the Owner of vehicle, was himself driving the vehicle of the Company and during the course of it, he died in an Accident and the point for consideration was whether the Accident took place due to his negligence or otherwise. It is observed that, although being the beneficent peace of legislature, the learned Tribunal may follow summary

procedure, but should not ignore basic principles of law. In the said case, the Claimants failed to implead the Driver of vehicle and failed to file documentary evidence regarding pay of Deceased. The Appeal was allowed and the Appellant was exonerated from the liability to pay the compensation.

[II] Judgments cited by the learned Advocate for the Claimants

[a] **Sunita and Others Vs. Rajasthan State Road Transport Corporation and Anr. ; AIR 2019 Supreme Court 994**, wherein, it is observed that, while dealing with the Claim Petition under the M.V. Act, the learned Tribunal would not be strictly bound by the pleadings of the parties. The standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubts, which is followed in criminal cases.

[b] **Sh. Fakir Chand Taneja Vs. Oriental Insurance Co. Limited ; LAWS [SC]-2022-9-221**, wherein, the salary of Deceased was considered by the learned Tribunal without deduction of income tax. In the said case, the learned Tribunal had taken into consideration only the basic salary and ignored all the Allowances, such as, Conveyance Allowance, House Rent Allowance, etc. It was observed that, the deductions made by the learned Tribunal were not at all justified except the deduction of driver assistance. The

monthly income of the Deceased therein was considered after deducting the income tax and the amount payable as driver assistance.

[c] **Geeta Dubey Vs. United India Insurance Company Limited ; AIR 2025 Supreme Court 386**, wherein, it is observed that, when the Accident or involvement of vehicle is disputed, the Claimant is only expected to prove the same on preponderance of probability and not beyond reasonable doubt.

8. Coming to the case on hand, one of the issues framed by the learned Tribunal was in respect of rash and negligent driving of the vehicle bearing No. MH-20-CR-4863 i.e. the Tractor and death of the Deceased due to the said Accident. As regards the contention of the learned Advocate for the Insurance Company that, their Application for examining the Investigating Officer was opposed by the Claimants, admittedly, there was no challenge to the order passed by the learned Tribunal rejecting the Application at Exhibit - 51 filed by the Insurance Company to summon the Investigating Officer in the aforesaid Crime as the Witness. Admittedly, no eyewitness to the Accident was examined by the Claimants. The Claimant No.1, who examined herself before the learned Tribunal, candidly admitted that, she did not witness the Accident. The record shows that, the Claimants moved the Application below Exhibit - 43 for issuance of summons to the eyewitnesses of the

Accident and the Director General of CRPF and the learned Tribunal by order dated 24/01/2019 issued Summons only to the Director General of CRPF. From this, it is clear that, the Claimants wanted to and intended to, examine the eyewitnesses to the Accident. Eventually, The Claimants relied on the Police Papers to prove the factum of motor vehicular Accident and death of Namdeo Jalindar Ghuge [Deceased] in the said Accident.

9. The Police Papers shows that, Crime No.165/2018 was registered against the unknown Driver for the offence punishable under Sections 304-A, 279 of I.P.C and Section 134/177 of the M.V. Act. The said Crime was registered on 12/05/2018 i.e. on the date of Accident. The Crime Details Form speaks of the Accident to the said motor bike, upon which, the Deceased and his friend were travelling. The Postmortem Report shows the name of the Deceased. The statement of the witness recorded during the investigation, though after three [3] days of the Accident, speaks of the Accident due to the use of the said Tractor and the name of Tractor Owner, on inquiry with the people gathered at the spot of Accident. The Police Papers comprised of the Final Report under Section 173 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.P.C'], which indicate that, the investigation of the said Crime culminated in filing of Charge-sheet against the Driver of the said Tractor. It is needless to state that, the Charge-sheet

was for the offence of rash and negligent Act by the said Tractor Driver. The said delay of three [3] days, will not be of much consequence in the MACP. It is settled position under the law that, the Police Papers can be looked into by the learned Tribunal / Court to determine the issue of negligence in the MACP. Useful reference can be made in that regard to the Judgment of the Hon'ble Supreme Court of India in **ICICI Lombard General Insurance Co. Ltd Vs. Rajani Sahoo & Ors.**, in Civil Appeal No. __ of 2025 [@ SLP (C) No.29302 of 2019] [Non-Reportable] dated January 02, 2025. Therefore, in the light of the Police Papers available on record, non examination of the witness to prove the factum of rash and negligent driving of the Tractor by its Driver will not be fatal for the Claimants.

10. There is no doubt that, Section 129 of the M.V. Act contemplates wearing of head gear / helmet by the rider of the two wheelers. The suggestion given to the widow of Deceased that, on the day of Accident, the Deceased was not wearing the helmet, was denied. Except the said suggestion, the Insurance Company failed to prove, even on the touchstone of preponderance of probability, their said contention of head gear / helmet.

11. As regards the contention that, the Deceased was not holding the valid and effective Driving Licence, it has categorically come in the cross-examination of the widow of Deceased done on behalf of

the Insurance Company that, the Deceased was holding valid and effective Driving Licence. Her further evidence that, nowadays that Licence was missing, will not lead to the conclusion that, the Deceased was not holding the Driving Licence. Thus, no fault can be found with the answering of the said issue by the learned Tribunal in the affirmative.

12. As regards the contention that, there was no sufficient proof in respect of the employment of the Deceased in the services of CRPF, the evidence of Witness No.2 examined by the Claimants is more than sufficient to establish that, the Deceased was in the services of CRPF. The evidence of the said Witness No.2 shows that, he was a Head Constable in CRPF and pursuant to the directions from his Office, in response to the Court Summons, he was deputed to attend the proceedings in the MACP. He deposed of attending the MACP pursuant to Exhibit - 47, which was the Movement Order issued under the signature of Deputy Commandant [Administration], CRPF, Talegaon, Pune. The said Movement Order shows that, the Authority to move as referred at Serial No.5 in the said Movement Order, was pursuant to the Approved Note Sheet No. J.II.619/2019/GCP-EC-II dated 13/02/2019. Nothing has come in his evidence to discard his testimony and the documents brought on record in his evidence. The Court Summons naturally will not be in the name of Witness

No.2. Non mentioning of authorization to Witness No.2 to give the evidence and file documents in the MACP will not be fatal, as there is clear mention of Approved Office Note at Serial No.5 in the Movement Order as referred above.

13. The Last Pay Certificate in the name of Deceased is brought on record at Exhibit - 48 in the evidence of this Witness No.2. It has come in his cross-examination that, the said Last Pay Certificate of the Deceased was received by his Office from Jammu and Kashmir by a Fax. Absence of certificate under Section 65-[B] of the Evidence Act will not be fatal to the admissibility of the said Pay Certificate in view of the well settled position under the law that, no strict rules of evidence are required while dealing with the MACP Act and the principles of preponderance of probability are to be applied. Useful reference can be made in that regard to the Judgment of the Hon'ble Supreme Court of India in **Sajeena Ikhbal & Ors. Vs. Mini Babu George & Ors. in Civil Appeal No(s).7881 of 2024 [Arising out of SLP (C) No(s). 25114 of 2019] [Reportable] dated October 17, 2024.**

14. The evidence of this Witness No.2 shows that, the said Pay Certificate was received from proper custody. Though the said Certificate was of February - 2019, the details mentioned therein shows that, the Deceased was paid the Salary up-to May - 2018 amounting to Rs.41,946/-. The Accidental death is also of May -

2018. The evidence of this Witness No.2 further shows that, a copy of Leave and Duty Certificate in the name of Deceased was brought on record at Exhibit - 49, showing that, the Deceased was sanctioned the Earned Leave [E.L] from 07/05/2018 to 05/06/2018. The motor vehicular Accident took place between the said leave period of the Deceased i.e. 12/05/2018. The Papers go to show that, there is communication at Exhibit - 54 filed by the Claimants and, which was under the signature of Deputy Commandant for DIGP, GC, CRPF, Pune addressed to the learned Presiding Officer of the Tribunal and it speaks of attending the proceedings of the MACP by Witness No.2, who was the Head Constable in CRPF. By the said communication, the attested copies of Service Book, attested copy of the Letter dated 25/02/2019 and attested copies of Form - 16 were sent to the learned Tribunal. Those documents fully established the Claimant's case that, the Deceased was in the services of CRPF.

15. As regards the contention of the learned Advocate for the Insurance Company that, the amount shown in Exhibit - 55 should be deducted from the amount of compensation awarded by the learned Tribunal, the said amount as shown in the said Letter at Exhibit - 55 is reproduced below :-

Risk Fund	Rs. 13,50,000/- paid to (Smt. Pooja Namdev Ghuge (Wife) (Rs.8,50,000/-) and Smt. Pushpa Jalinder Ghuge (Mother) (Rs.5,00,000/-)
GIS	Rs. 31,335/- (Bill sent to PAO vide bill No.HO73GIO337-18-19-73, dated 09/2018)
Leave Encashment	Rs.44,041/- (Bill will be sent to PAO after passing of family pension)
Family pension / DCRG	Proposal sent to PAO vide letter No.P.III78/2028-FP-73 dated 15/02/2029
GPF / DLI	N/A due to appointment after 01/01/2024
Form 16	Attached with letter

16. The said contention in respect of deduction of the said amount from the amount of compensation has no base. Useful reference can be made to the observations in **Meenakshi Vs. The Oriental Insurance Co. Ltd., in Civil Appeal No(s). _ of 2024** [Arising out of **Petition for Special Leave to Appeal (Civil) Diary No.39746 of 2018**] [Reportable] dated July 23, 2024, by the Hon'ble Supreme Court of India, which read as under :-

9. *Recently in a judgment dated 11th July, 2024 in **National Insurance Company Ltd. v. Nalini and Ors. [Petition for Special Leave to Appeal (C) NO.4230/2019]**, this Court held that, allowances under the heads of transport allowance, house rent allowance, provident fund loan, provident fund and special allowance ought to be added while considering the basic salary of the victim/deceased to arrive at the dependency factor.*
10. *Therefore, components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor.*

17. On the very aspect, useful reference can be made to the decisions in **Reliance General Insurance Company Vs. Shashi Sharma ; [2016] 9 SCC 627, Sebastiani Lakra Vs. National**

Insurance Company Limited ; AIR 2018 SC 2079, National Insurance Company Ltd. Vs. Mannat Johal [2019] 15 SCC 260 and Helen C. Rebello [Mrs] and Others Vs. Maharashtra State Transport Corporation and Another ; [1999] 1 SCC 90, reiterating the settled position under the law that, Family Pension, Provident Fund, Insurance, any Cash, Bank Balance, Shares, Fixed Deposit etc., are all pecuniary advantages receivable by heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned only on account of Accidental death. Thus, the said amount shown in Exhibit - 55 will not be liable for deduction from the compensation amount.

18. From the above discussed evidence, the Claimants have established that, the Last Pay of Deceased was Rs.41,946/-. Considering the Salary of the Deceased mentioned in the Last Pay Certificate, yearly Income of the Deceased from the Salary comes to Rs.5,03,352/- [Rs. 41,946 x 12]. There is no dispute that, under the settled position in law, the Statutory deductions are to be made from the Income while computing the compensation in the MACP. Exhibit - 56, which is a Certificate under Section 203 of the Income Tax Act, 1961 for tax deducted at source from income chargeable under the head "Salaries", is for the period from March - 2017 to February - 2018. The said document shows that, the Tax on the total Income of Deceased was Rs.3,025/- and Rs.2,500/-, were

deducted from the same towards Rebate and the final Income Tax was computed as Rs.525/-. In the said document, the total Gross Income of the Deceased is shown as Rs.3,72,024/- and after deductions, barring Income Tax, Income is shown as Rs.3,10,510/-. From this, it appears that, till February - 2018, monthly Salary of the Deceased was less than the Salary shown in the Last Pay Certificate. The consideration of the Last Pay of the Deceased by the learned Tribunal cannot be faulted. The Last Pay Certificate does not show deduction towards the Income Tax. However, from the above Certificate at Exhibit - 56, it is clear that, the Income of the Deceased was taxable. From the above material on record i.e. Last Pay Certificate and Certificate at Exhibit - 56 towards the Tax, it appears that, the Salary of the Deceased prior to the said Last Pay was below Five Lakhs. It is needless to state that, the Tax on the Income is governed by the provisions of the Income Tax Act. It is not clear as to how come there was deduction of Rs.2,500/- towards rebate from the Income Tax shown in the aforesaid Certificate at Exhibit - 56. There is no material on record to show that, as to how much Income Tax was deducted from the Salary of the Deceased from March - 2018. There can be no two views on the aspect that, the actual Income Tax deduction shown in the admissible documents will have to be considered for Statutory deduction under the head of Income Tax from the income. In absence of any

other document contrary to this on the aspect of Income Tax, the amount of Rs.3,025/- as shown in Exhibit - 56 as the amount of Tax on total Income, is to be deducted from the income of the Deceased. The amount of yearly income after deducting the said amount towards Income Tax from the income of the Deceased would come to Rs.5,00,327/-.

19. The Last Pay Certificate at Exhibit - 48 and the above referred Certificate in respect of deductions at Exhibit - 56 nowhere shows deductions towards the Professional Tax. It is established that, the Deceased was in CRPF, which comes under the Central Government. In absence of any material to show that, Professional Tax was deducted, from the Salary of the Deceased, the deduction of Rs.2,500/- by the learned Tribunal towards Professional Tax from the yearly Income of the Deceased is without any basis and there is nothing to show that, the Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975 was applicable to the Deceased. Hence, in absence of any material to support the deduction towards Professional Tax as made by the learned Tribunal, the same needs to be interfered with.

20. As regards 50% addition to the total income per year, 1/3rd deductions towards Personal and Living Expenses, Multiplier of

17, and amount towards Funeral Expenses and Loss of Estate considered and computed by the learned Tribunal do not call for any interference, being in accordance with the Judgment in **National Insurance Company Limited Vs. Pranay Sethi And Ors.** [2017] 16 SCC 680.

21. As regards the Consortium of 40,000/- granted by the learned Tribunal is concerned, it needs to be granted to each Claimant being Widow, Daughter and Mother of the Deceased towards Spousal Consortium, Filial Consortium and Parental Consortium in light of the Judgment in **Magma General Insurance Co. Ltd. Vs. Nanu Ram and Ors. ; 2019 [4] Mh.LJ 1.** As far as grant of Interest is concerned, the learned Tribunal awarded the same by relying on the Judgment in Neeta Vs. The Div. Manager, MSRTC in Civil Appeal Nos. 348-349 of 2015 [Arising out of SLP (C) Nos.4897-4898 of 2014] dated 13/01/2015. The said Judgment is based on the Judgment in Municipal Corporation of Delhi, Delhi Vs. Uphaar Tragedy Victims Association and Ors.; MANU/SC/1255/2011.

22. In view of the above discussion, the compensation awarded by the learned Tribunal needs to be re-calculated and modified as follows :-

Nos.	Particulars		Amount
A	Total income per year	41,946 x 12	5,03,352/-
B	Less 10% Income Tax	5,03,352 - 3,025	5,00,327/-
C	50% to be added in total income per year	5,00,327 + 2,50,163	7,50,490/-
D	1/3 deductions towards personal and living expenses	7,50,490 ÷ 3 = 2,50,163	5,00,327/-
E	Pecuniary loss after applying multiplier of 17 as the Deceased was just 30 years old	5,00,327 x 17	85,05,559/-
F	Add : Funeral Expenses		15,000/-
G	Add : Loss of Estate		15,000/-
H	Add : Loss of Consortium	40,000 x 3	1,20,000/-
I	Total Compensation payable to the Claimants		86,55,559/-

25. In light of the above, the Appeal filed by the Insurance Company is dismissed and the Appeal filed by the Claimants is partly allowed. The impugned Judgment and Order / Award stands modified to the extent as shown in the above Chart. The apportionment of the total compensation will be as follows :-

- | | | | |
|----|----------|----|-----------------|
| 1. | Widow | :- | Rs. 50,00,000/- |
| 2. | Daughter | :- | Rs. 26,55,559/- |
| 3. | Mother | :- | Rs. 10,00,000/- |

25.1 The Operative Order of the impugned Judgment in respect of investing the amount of compensation from the Share of the Claimants is maintained.

26. The Appeals stand disposed off accordingly.

[NEERAJ P. DHOTE, J.]

LATER ON :-

27. After the pronouncement of Judgment, the learned Advocate for the Insurance Company seeks stay to the effect and implementation of the Order, by which the Appeals of the Claimants are partly allowed. He submits that, the Insurance Company intends to challenge the same.

28. The learned Advocate for the Claimants opposes the said prayer.

29. As the Appeals arise out of the Motor Accident Claim, prayer of the Insurance Company is rejected.

[NEERAJ P. DHOTE, J.]