2023:BHC-AUG:25561

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1180 OF 2011

The Divisional Controller,
NEKSRTC, Bidar, Dist. Bidar.
(Karnatake State)

… Appellant

… Versus …

1 Smt. Sushila w/o Shrimant @ Hanumant Phad,
Age 38 yrs., Occ. Household,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

2 Sanket Shrimant @ Hanumant Phad,
Age 18 yrs., Occ. Education,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

3 Suchita d/o Shrimant @ Hanumant Phad,
Age 15 yrs., Occ. Education,
U/G of mother – respondent No.1,
R/o as above.

4 Mandubai w/o Acchyutrao Phad,
Age 68 yrs., Occ. Household,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

5 Acchyut Namdeo Phad,
Age 78 yrs., Occ. Agri.,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

… Respondents

...

Mr. V.D. Gunale, Advocate for appellant

Mr. B.R. Kedar, Advocate for respondents

...

WITH

FIRST APPEAL NO.2637 OF 2013

1 Smt. Sushila w/o Shrimant @ Hanumant Phad,
Age 38 yrs., Occ. Household,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

2 Sanket Shrimant @ Hanumant Phad,
Age 18 yrs., Occ. Education,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

3 Suchita d/o Shrimant @ Hanumant Phad,
Age 15 yrs., Occ. Education,
U/G of mother – respondent No.1,
R/o as above.

4 Mandubai w/o Acchyutrao Phad,
Age 68 yrs., Occ. Household,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

5 Acchyut Namdeo Phad,
Age 78 yrs., Occ. Agri.,
R/o Doundwadi, Tq. Parli Vaijnath,
Dist. Beed.

... **Appellants**

... **Versus** ...

The Divisional Controller,
NEKSRTC, Bidar, Dist. Bidar.

(Karnatake State)

… Respondent

...

Mr. B.R. Kedar, Advocate for appellants

Mr. V.D. Gunale, Advocate for respondent

...

CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 27th SEPTEMBER, 2023

PRONOUNCED ON : 07th DECEMBER, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 The present appeals are arising out of the Judgment and Award passed in Motor Accident Claim Petition No.38/2008 by the learned President, Motor Accident Claims Tribunal, Ambajogai, Dist. Beed on 10.02.2011, whereby the said claim petition came to be partly allowed. Here, the First Appeal No.1180 of 2011 is filed by the original respondent, whereas First Appeal No.2637 of 2013 is filed by the original claimants and, therefore, both the appeals are proposed to be decided by this common Judgment. (For the sake of convenience hereinafter the parties are referred to by their original nomenclature before the Tribunal.)

2 Original claimants contended that claimant No.1 is the widow of

Shrimant @ Hanumant Acchyut Phad, claimant Nos.2 and 3 were the children of deceased and claimant No.1, and claimant Nos.4 and 5 are the parents of deceased Shrimant. Shrimant was aged 42. He was Engineer, Contractor, Professor and he was doing the business of deary farming, animal husbandry, jaggery preparation and other such activities as well as running coaching classes. His monthly income was Rs.2,02,500/-. The accident took place at about 2.25 p.m. on 07.10.2007 at Ghatnandur on Ambajogai to Ahmedpur State Highway. Deceased was driving motorcycle bearing No.MH 24-G-9783. One Manik Bapu Daund was his pillion rider. Deceased was proceeding from left side of the road with moderate speed. His vehicle was dashed by Karnataka State Transport Bus bearing No.KA 38-F-358. The respondent had deputed one Santoshkumar Kashinath Subhane, who was barely 26 years of age, inexperienced driver, who had completed 17 days in service to drive an interstate bus. He was rash and negligent. Due to high speed the bus gave dash to the motorcycle, as a result of which the deceased as well as pillion rider fell down. They sustained multiple injuries. The deceased was shifted to Swami Ramanand Tirth Rural Medical College Hospital, Ambajogai and thereafter shifted to Vivekanand Hospital, Latur. He was operated, however, he succumbed to the injuries on 12.10.2007. The claimants have given the details of the income, which according to them, the deceased was earning from various sources and put up the calculation and

demanded compensation of Rs.3,68,36,246/-.

3 The respondent filed written statement at Exh.12 and denied all the allegations. The age, income of the deceased and the manner of accident as claimed in the petition has been denied. However, place, date and time of accident and also registration of the First Information Report has not been disputed. It has been contended that the claimants in collusion with police registered a false case against a driver of the respondent. It is not disputed that Santoshkumar was driving the said bus at the relevant time, but according to the respondent, he was driving the said vehicle with utmost care. According to the respondent, the deceased himself had lost the control over his vehicle as he was driving it recklessly and wanted to avoid a collusion with jeep coming from opposite direction. It is categorically denied that the bus had given dash to the vehicle driven by the deceased.

4 Taking into consideration the pleadings the issues came to be framed, parties have led oral as well as documentary evidence and after considering the evidence on record, the petition came to be partly allowed. It was held that the claimants are entitled to receive compensation of Rs.21,05,000/- towards their compensation on all counts inclusive of amount of Rs.50,000/- under Section 140 of the Motor Vehicles Act. Interest @ 7.5 % per annum from 18.02.2008 till its actual realization.

5 As aforesaid, both the parties have approached this Court by filing the above said First Appeals. The respondent is challenging the Judgment and Award on all counts, whereas the appeal preferred by the claimants is for the enhancement.

6 Heard learned Advocate Mr. V.D. Gunale for the appellant and learned Advocate Mr. B.R. Kedar for the respondents in First Appeal No.1180 of 2011 and learned Advocate Mr. B.R. Kedar for the appellants and learned Advocate Mr. V.D. Gunale for the respondent in First Appeal No.2637 of 2013.

7 It has been vehemently submitted on behalf of the respondent that the learned Tribunal failed in appreciating the evidence. The claimants had not examined any person to prove the alleged rash and negligent driving on the part of the driver of the respondent. CW 1 Sushila is the widow of deceased and in her cross-examination she has clearly admitted that she has not witnessed the accident. The respondent has examined its driver Santoshkumar as RW 1. Santoshkumar has clearly stated that he was taking his bus from the left side of the road. A motorcycle driver was trying to overtake his bus from wrong side i.e. from his left side. There was a ditch in front and in the process of avoiding the said ditch the motorcycle fell down. The motorcycle rider had not put helmet on his head. He had gone to the nearest Police Station to give the information, however, his First Information

Report was not taken and, therefore, he had made complaint with Superintendent of Police. Under the said circumstance, the testimony of RW 1 Santoshkumar ought to have been considered by the learned Tribunal. Learned Advocate for the respondent Corporation relied on **Oriental Insurance Co. Ltd. vs. Premlata Shukla and others** [2007 AIR SCW 3591], wherein Hon'ble Supreme Court has held that in a claim petition proof of rashness and negligence on the part of driver of vehicle is the *sine qua non* for maintaining application under Section 166 of the Motor Vehicles Act. Learned Advocate for the respondent has also relied on the Single Bench decision of this Court in **Trupti Tukaram Matkar and another vs. Anthony R. Monteiro and others** [2008 (2) Mh.L.J. 809], wherein it has been held that if the deceased himself was negligent as a result whereof the accident took place, then the claimants are not entitled for any compensation. Learned Advocate appearing for the respondent submitted that the claim petition itself ought to have been, therefore, dismissed by the learned Tribunal.

8 The learned Advocate for the claimants submitted that the point of rashness and negligence has been properly appreciated by the learned Tribunal. It is not in dispute that the offence was registered against Santoshkumar. Copy of the First Information Report has been filed by the claimants at Exh.28/C. The claimants have also filed the copy of spot

panchnama at Exh.32, which shows that the dash to the motorcycle was from the back side and the colour of the bus was to the back side of the motorcycle as well as the front side of the bus near the cleaner's side head light got damaged. It is not in dispute that Shrimant died because of the accidental injuries and, therefore, the accident was proved to be the result of the rashness and negligence on the part of the Santoshkumar. Santoshkumar has admitted in his cross-examination that it was his 17th day of service with respondent. He was totally inexperienced; yet, a long distance vehicle was allotted to be driven by him. Therefore, the respondent is vicariously liable to pay compensation to the claimants.

9 Learned Advocate for the claimants while canvassing the claimants' appeal submitted that the learned Tribunal had not appreciated the voluminous record that was produced and various witnesses those were examined to prove the income of the deceased. There was various sources of income to the deceased. His degree certificate is on record. He was Bachelor of Engineering. He had agricultural lands and the 7/12 extracts have been produced on record. CW Dnyanoba Phad worked with deceased for about four years for preparation of jaggery. He has categorically stated that there was a factory/furnace constructed in the field of Shrimant. He has given the details of how much material and infrastructure is installed for preparation of

jaggery. He has stated that deceased used to get daily profit of Rs.1,000/- from the said business. Thereafter claimants have examined PW Hanumant Prabhu Phad, who was also employed by deceased Shrimant for maintaining his agricultural land. Deceased was taking sugarcane, soybean, hybrid, tur, wheat and vegetables in his fields, so also he had cattle. He was selling the milk of the cattle at Ghatnandur, Parli and Ambajogai. Further witness CW Bandu Bhimrao Shep was the Manager at the coaching class of deceased Shrimant. He has stated that deceased had started coaching class under the name of "Phad Coaching Classes for 11th, 12th and CET". Since 2006 this witness was working as a Manager and he has stated that more than 100 students had taken admission. The coaching class used to give income of Rs.10,00,000/- per year to Shrimant. Further to support his testimony claimants have examined CW Bhimrao Meshram, who is the Shop Inspector, working at Ambajogai. He has proved the Shop Act Licence issued by his office to 'Phad Physics Classes', which is at Exh.84. Further, CW Vishwanath Ramdas Sawale is the Income Tax Inspector, who has stated that as per the Income Tax Return Exh.69 for 2007-2008 the income of deceased Shrimant was Rs.18,61,488/-, of which profit has been shown as Rs.1,49,920/- and tax has been deducted of Rs.42,814/-. CW Shriniwas Pandharinath Nakka from Vivekanand Hospital has deposed that amount of Rs.53,000/- was charged for the treatment of deceased by the hospital. CW Jagannath Kisanrao

Daund has deposed that Shrimant was the Government Contractor. Public Words Department had issued certificate to him and had given licence for the work up to Rs.15,00,000/-. He had done the work of Rs.23,00,000/- in 2006-07. This witness had worked under Shrimant. Profit from the said work was Rs.5,00,000/-. CW Dr. Sandipan Jadhav was the Principal of Rajarshi Shahu Mahavidyalaya, where Shrimant was engaged for taking Summer Coaching Classes and he was given amount of Rs.200/- per hour and the certificate to that effect has been produced and proved at Exh.80. Certainly, all these witnesses have proved various sources of income and, therefore, it was wrong for the Tribunal to hold that no proper evidence has been adduced to prove the income and, therefore, only by taking the Income Tax Returns the income of the deceased has been taken at Rs.2,00,000/- per annum. He submitted that it should be as per the calculation given by the claimants and he also relied on the decision in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** [(2009) 6 SCC 121], **National Insurance Company Limited vs. Pranay Sethi and others** [2017 AIR (SC) 5157] and **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others** [2018 (4) TAC 345]. He, therefore, prayed for the enhancement. In reply to the appeal for enhancement in the compensation, learned Advocate for the Corporation appears to have alternatively submitted that whatever compensation has been granted by the Tribunal is proper and

just.

10 Taking into consideration the rival contentions following points are arising for determination, findings and reasons for the same are as follows.

Sr. Nos.	POINTS	FINDINGS
01	Whether claimants have proved that the accident was caused due to the rashness and negligence in the driving of Santoshkumar while driving bus bearing No.KA 38-F-358 ?	In the affirmative.
02	Whether the claimants are entitled to get compensation and in view of the appeal for enhancement whether they are entitled to get enhancement in the compensation ? If yes, what should be the just amount of compensation ?	In the affirmative. As per final order.

REASONS

Point No.1 :

11 At the outset, we do not dispute the ratio laid down in the decisions relied by the learned Advocate for the respondent Corporation i.e. **Premlata Shukla** (supra) and **Trupti Tukaram Matkar** (supra), however, in

the present case though it can be seen that CW 1 Sushila is not an eye witness to the accident; yet, a certified copy of deposition of witness Shesherao Sonerao Phad from Motor Accident Claim Petition No.139/2010 which appears to be the sister claim petition before the same Tribunal came to be filed, wherein the eye witness was examined in the said case and cross-examined on behalf of the respondent Corporation by the same Advocate and with consent of both the parties the said certified copy of the deposition came to be exhibited as Exh.87. Under the said circumstance, now, at the appellate stage it does not lie in the mouth of the respondent Corporation that eye witness has not been examined on behalf of the claimants. Said Exh.87 since has been read and recorded in the present case, the Tribunal was justified in relying upon the same. The said eye witness Shesherao has stated that he had gone to Ghatnandur on 07.10.2007 and he was in front of one Shatrughna Moti's shop for checking the air from his motorcycle. He could see that his cousin uncle Manik and cousin brother Shrimant were proceeding from the road in front of Shatrughna Moti's garage. He had then seen that their motorcycle was dashed by a bus going towards Bidar. The bus driver left the bus at the place and fled away and thereafter he along with some other persons, whom he had named, had made arrangements to shift both the injured to Ambajogai Government Hospital. This witness in his cross-examination by the respondent Corporation has given the location of

the accident spot and thereafter except denial there is nothing. It can be seen that the Corporation has not come with a case that Shesherao's statement under Section 161 of the Code of Criminal Procedure was not recorded by police during the course of the investigation of the crime. Under the said circumstance, when the eye witness to the incident has been examined by the claimants, the above said ratio will not be applicable. If we consider the testimony of driver Santoshkumar, then it gives a picture that there was absolutely no contact between his bus and the motorcycle. He has tried to pose that the motorcycle driver was trying to overtake his bus from wrong side i.e. from the left side of the bus and there was a ditch. In the process of avoiding the ditch the motorcycle fell down. His testimony is totally contradictory to the spot panchnama, wherein it is specifically stated that the front cleaner side of the bus had received damage and the colour of the bus could be seen at the back side of the motorcycle, which got damaged. Further, he is giving a different story than the story tried to be raised in the cross of CW 1 Sushila and the suggestions in the cross of eye witness Shesherao. It was suggested that when the motorcycle driven by the deceased was tried to be overtaken from the left side of the bus and it came in front of the S.T. Bus (that means the act of overtaking was complete), a jeep came from the opposite side, as a result of which deceased got frightened and fell down on his own. No theory of ditch was introduced or

suggested to them. The spot panchnama does not show that there was any ditch on the road. The driver of the bus has been prosecuted after due investigation. This much evidence was sufficient to hold that the accident had taken place due to the negligence on the part of driver Santoshkumar, who had put barely 17 days in the service. Respondent has not examined any other witness to support the story put forward by Santoshkumar.

12 The certified copy of the Postmortem Report proves that deceased died due to the accidental injuries and, therefore, the point is answered in the affirmative.

Point No.2 :

13 In view of the findings to point No.1 in the affirmative the natural corollary would be that the driver Santoshkumar and the respondent Corporation vicariously would be liable to pay compensation to the legal representatives of deceased Shrimant. The provisions in respect of Section 166 of the Motor Vehicles Act and other Sections are benevolent provisions and it is settled principle of law that, in such cases the Tribunal is bound to grant just compensation. The word 'just' herein includes adequate, sufficient compensation based on the evidence i.e. adduced by the claimants. While arriving at the amount of compensation we are guided by various decisions of

Hon'ble Supreme Court. Here, the Tribunal has considered that income of the deceased has been proved to the extent of Rs.2,00,000/- per annum only, when in fact, many persons have been examined by the claimants to prove the income. According to the claimants, the income of the deceased from various sources was Rs.2,02,500/- per month and, therefore, when it was found by the claimants that whatever has been granted by the Tribunal was inadequate, the First Appeal has been filed for the enhancement.

14 It is now, therefore, required to re-appreciate the evidence i.e. adduced by the claimants to support their contention in respect of income of the deceased. It can be seen from the certificate of Dr. Babasaheb Ambedkar Marathwada University that deceased got the degree of Bachelor of Engineering on civil side in December, 2000, but it appears that he was self employed. There are 7/12 extracts produced on record to show that the family has agricultural lands, which appeared to be together with other persons, may be ancestral. What we could also get from the miscellaneous papers is that one land was purchased by deceased for Rs.1,25,000/- on 13.05.2005, original sale deed of it has been produced. It is well settled law that strict rules of proof in Indian Evidence Act are not applicable to the claim petitions and, therefore, the original sale deed ought to have been in fact exhibited. The said land has been purchased in the name of claimant

No.1, whose occupation has been shown as household and agriculture. Another land was purchased for amount of Rs.75,000/- on 11.09.2003 in the name of deceased and that original sale deed is also on record. We are taking note of these two original sale deeds. Therefore, what we could get is that he was an agriculturist also. Definitely, in the cross CW 1 Sushila has stated that they are having possession over the said agricultural lands even after the demise of Shrimant. Therefore, whatever has been posed by the claimants that there is loss from the agricultural income cannot be accepted. At the most the claimants would be entitled to get amount under the head 'Loss of Estate'.

15 The next source of income to the deceased and which was stated to be a major portion was from the coaching classes. In order to prove the said source of income claimants have examined CW 2 Bandu Shep, who posed himself as the Manager appointed by the deceased to manage the coaching class and he says that the income from the said source to the deceased was to the extent of Rs.10,00,000/- per annum. However, he has not stated since when the coaching classes were started. He says that he was employed as a Manager since 2006 till October, 2007. He has produced certain note books in respect of admission of students which he claims that those are in his handwriting. However, in the cross-examination he claimed

ignorance as to whether deceased was paying income tax in respect of the income earned from the coaching class. The claimants have also examined CW Bhimrao Meshram, the Shop Inspector, who has proved the Shop Act Licence Exh.84. Certainly it appears that the coaching classes were taken in Prashant Nagar, near Kalanjali College in Ambajogai under the name and style, “Phad Physics Classes”, which was in the name of deceased. It appears that the said class/shop came to be registered under the Shop Act Licence for the first time on 27.10.2006. The record that has been produced is for the year 2006, 2007 and 2008 also. When the accident took place and deceased expired on 07.10.2007, question arises, who continued the said coaching class, as the noting for the year 2008 are also appearing in the register. Further, it is to be noted that though claimants advocated for granting an exhibit number when this witness Bandu Shep told that the said record i.e. the note books are in his handwriting; yet, objection was raised by the respondent Corporation that it does not bear the signature of the witness or even by the deceased and, therefore, those registers/note books cannot be exhibited. The Tribunal has given article numbers to the same. What we could therefore get from those article numbers is names of certain students have been recorded without their being any record in respect of the receipt of the fees paid by them. At the most, therefore, what can be seen from the Shop Act Licence that the said coaching classes started in 2006, certainly,

there was some income to the deceased from the said source.

16 At this stage itself we would like to take note of the testimony of CW Vishwanath Sawle, who was the Income Tax Inspector and after perusing Exh.69 he has stated that deceased has done the work of Rs.18,61,488/-, out of which he received profit of Rs.1,49,920/- and he has paid tax to the extent of Rs.42,814/-. Careful perusal of Exh.69, the Income Tax Return, would show that what has been shown under the head “Income from Business” is net profit under Section 44 AD @ 8% of total gross receipt of Rs.18,61,488/-, but the business income has been shown at Rs.1,48,920/- only. There is absolutely no explanation on the part of the claimants that when the gross receipt was manifold, then how the profit could be only to such a small extent and the tax has been paid on Rs.1,48,920/- only. The Tribunal was, therefore, justified in considering the business income to the extent of Rs.1,48,920/- only, on which the tax has been paid. The alleged income on which the tax has not been paid cannot be considered at all, when there is absolutely no explanation. Therefore, the said Income Tax Return Exh.69 does not support the statement of CW Bandu Shep that the coaching class was giving income around Rs.10,00,000/- per annum to the deceased. However, at this stage we would like to express that by maintaining such vague accounts it is the tendency of people to hide the real income and pay

less income tax. Therefore, we need not restrict ourselves to the income that has been shown from one category of source of income which has been reflected in, in the Income Tax Return; when the deceased was having different sources of income.

17 Claimants have then examined CW Jagannath Daund, who claims that he was serving with deceased when deceased Shrimant was doing the work as registered Contractor with Public Works Department. He claims that Shrimant was authorized to take work up to Rs.15,00,000/- and for the year 2006-07 he had done the work to the extent of Rs.23,00,000/-, which earned him Rs.5,00,000/-. Important point to be noted is that there is absolutely no documentary evidence to support the said statement. When in fact, the Public Works Department gives such contracts there would be documents, the contractors will have to get themselves registered and there would be every account in respect of payment made through the department to such contractors. This should reflect then in the Income Tax Returns. At the cost of repetition, we would like to say that Exh.69 is not supported by balance sheet showing that the gross receipt was to the extent of Rs.18,00,000/-. The proper person to prove this source of income as contractor registered with Public Works Department was to examine a person from the Public Works Department, who could have brought the documents

available with the department and not CW Jagannath Daund. The said witness also says that deceased used to undertake construction activities, preparation of plans of houses and management of the construction of the houses and the said different source of income used to earn Rs.25,000/- per month to deceased. Again there is absolutely no documentary evidence to support his testimony. It appears that no written contracts came to be entered between deceased and the persons whose houses were allegedly constructed by him or planned by him. Under the said circumstance, we cannot rely on the testimony of CW Jagannath and cannot give any advantage to the claimants. It will have to be held that there was no such source of income to the deceased.

18 The further source of income is stated to be giving the jaggery furnace on rent and preparation of the jaggery and to support the said source of income which alleged to have been giving income of Rs.1,000/- per day to the deceased, claimants have examined CW Dnyanoba Phad, who says that he used to serve with deceased for about four years. He has given the details of the equipments and how the jaggery used to be prepared, however, except his bare words there is absolutely nothing on record. The 7/12 extracts which have been produced by the claimants would show that in land Gat No.125 at Daundwadi, Tq. Parli Vaijnath in 36 R land there is sugarcane, so

also in land Gat No.115 from Daundwadi there is sugarcane, in other lands the crops like Hybrid, Tur, Jowar, Cotton, Soybean has been taken. From above lands, land Gat No.115 admeasuring 50 R stands in the name of claimant No.5 i.e. father of the deceased, whereas land Gat No.125 stands in the name of deceased. Therefore, testimony of witness Dnyanoba appears to be in total exaggeration. No such source of income can be said to be there for the deceased, as for the preparation of jaggery much more sugarcane is required than the area shown in the 7/12 extract. As regards the jaggery from the sugarcane supplied by some other persons there is no record.

19 Further, in the same line, witness Hanumant Prabhu Phad claims that he was employed by deceased as yearly servant for four years. He says that the family of the deceased has 20 acres of irrigated land, which has been well developed and the family used to take cash crops. He has also stated about cattle, milk business, sale of she buffaloes etc. as additional sources of income for the deceased. Again except his bare words there is nothing as regards additional source of income than agricultural land reflected in 7/12 extract. Therefore, we cannot pay much attention to his testimony.

20 Further, source of income is stated to be that deceased was engaged by Rajarshi Shahu College for teaching. CW Dr. Sandipan Jadhav, the Principal has stated that deceased was given the work of Summer

Coaching Classes for the standard 11th and 12th and he was given Rs.200/- per hour. He has proved the certificate Exh.80, however, if we consider the said certificate, it says that on an average Rs.20,000/- per month was given to him for the academic year 2002-03. There is no record or the witness does not say that for the year 2006-07, 2007-08 also he was engaged by the college. Therefore, the alleged income which gave him money four years prior to his death, it cannot be considered at this stage.

21 Therefore, the re-appreciation of the evidence of all these witnesses would certainly show that their testimony is not sufficient to prove that the income of the deceased as per the petition was Rs.2,02,500/- per month. However, we do not agree to the inference drawn by learned Tribunal that at the most his income would have been Rs.2,00,000/- per annum. Certainly, he had the capacity also to earn and the coaching classes were recently started would have flourished. The learned Tribunal ought not to have restricted the income only on the basis of Exh.69. Taking into consideration the evidence that has been led and the capacity to earn we take the income of the deceased would have been to Rs.5,00,000/- per annum. Further, in view of **Pranay Sethi** (supra) the future prospects are required to be added. Here, Exh.69 - the Income Tax Return and the other documents on record would show that the date of birth of deceased was 01.12.1965 and the

death occurred due to accident on 12.10.2007. Therefore, on the date of incident he was around 42 years of age. He was self employed and, therefore, paragraph No.61(iv) of **Pranay Sethi** (supra) would be applicable. 25% of his income should be taken as future prospects. That amount comes to Rs.1,25,000/- (25% of Rs.5,00,000/-). Therefore, the income for our calculation purposes would come to Rs.6,25,000/- (Rs.5,00,000/- + Rs.1,25,000/-). It has come on record that there were present claimants as family members in the family of deceased that five in number and, therefore, in view of **Sarla Verma** (supra) ¼th of the income is required to be deducted towards personal expenditure. That amount comes to Rs.1,56,250/- (¼th of Rs.6,25,000/-). Therefore, the net income would come to Rs.4,68,750/- per annum (Rs.6,25,000/- - Rs.1,56,250/-). Further, in view of **Sarla Verma** (supra) and the fact that deceased was aged 42, multiplier that can be applied would be 14 and after applying multiplier, the loss of income for the claimants would be Rs.65,62,500/- (Rs.4,68,750/- x 14). Thereafter amount of Rs.50,000/- is awarded each to claimant Nos.1 to 3 towards loss of consortium, love and affection respectively. That amount comes to Rs.1,50,000/-. Amount of Rs.40,000/- each is given to claimant Nos.4 and 5 i.e. the parents towards loss of consortium/filial in view of **Magma General Insurance Co. Ltd.** (supra). That amount comes to Rs.80,000/-. Amount of Rs.50,000/- is awarded towards loss of estate and an amount of Rs.15,000/-

towards funeral in view of **Pranay Sethi** (supra) and **Magma General Insurance Co Ltd.** (supra). Thus, the claimants would be entitled to get compensation of Rs.68,57,500/- (Rs.65,62,500/- + Rs.1,50,000/- + Rs.80,000/- + Rs.50,000/- + Rs.15,000/-).

22 This amount of Rs.68,57,500/- would be then inclusive of the amount awarded by the Tribunal, which itself was inclusive of amount of Rs.50,000/- towards No Fault Liability i.e. Rs.21,05,000/-. It appears from order dated 05.07.2011 and 11.10.2017 passed by this Court that ad interim stay was granted by this Court in favour of the Corporation on condition of deposit of 50% of the amount recoverable under the Award passed by the Tribunal. In fact, the said order was confirmed by this Court by order dated 14.09.2011 and then the original claimants were allowed to withdraw the said 50% of the amount on submitting undertaking to the Court. Under the said circumstance, even from the said amount of Rs.21,05,000/- together with interest only 50% amount appears to have been allowed to be withdrawn by the original claimants and, therefore, now, the distribution is required to be made accordingly between the claimants to receive the enhanced amount as well as the original amount. We are also taking note of the fact that in the meantime original claimant Nos.2 and 3 have become major. Accordingly, the point is answered in the affirmative and distribution

is made.

23 Note has been taken that when the claim petition was filed, age of claimant Nos.4 and 5 was 68 and 78 respectively. Definitely, they would have been looked after by claimant No.1, even now and, therefore, less amount is awarded to their share. So also, claimant No.2 has become major and would searched for independent source of income and, therefore, equal share is not granted to claimant Nos.2 and 3. Still the house will have to be managed by claimant No.1 and, therefore, more amount is allotted to her share. The rate of interest that was awarded was @ 7.5%, however, taking into consideration the present rate of interests and the enhancement that we are granting from today, we grant the rate of interest @ 6% per annum.

24 In view of the findings to both the points the appeal filed by the Corporation deserves to be dismissed and the appeal filed by the original claimants deserves to be allowed partly, as certainly they are not entitled to get the amount claimed by them.

25 For the aforesaid reasons we proceed to pass following order.

ORDER

1 First Appeal No.1180 of 2011 stands dismissed.

2 First Appeal No.2637 of 2013 stands partly allowed.

3 The Judgment and Award passed in Motor Accident Claim Petition No.38/2008 to the extent of grant of compensation stands modified as follows :

> "i) It is hereby held that claimants are entitled to receive amount of Rs.68,57,500/- (inclusive of amount of Rs.21,05,000/- awarded by the Tribunal, which itself was inclusive of amount of Rs.50,000/- towards No Fault Liability) together with interest @ 6 % per annum from the date of the petition i.e. 18.02.2008 till its realization.
>
> ii) The amount which has been already withdrawn by the claimants should be deducted from the above awarded amount.
>
> iii) From the rest of the amount, amount of Rs.7,50,000/- each be given to claimant Nos.4 and 5 towards their full and final share from the compensation amount and to be distributed 50% to their account in any Nationalized Bank and 50% to be kept in FDR for a period of 13 months in the said Nationalized Bank.

iv) From the rest of the amount, amount of Rs.10,00,000/- each be given to claimant Nos.2 and 3 towards their full and final share from the compensation amount and to be distributed 50% to their account in any Nationalized Bank and 50% to be kept in FDR for a period of 03 years in the said Nationalized Bank.

v) Rest of the entire amount be given to the share of claimant No.1 and to be distributed 50% to her account in any Nationalized Bank and 50% to be kept in FDR for a period of 03 years in the said Nationalized Bank.

vi) Award be prepared accordingly."

(ABHAY S. WAGHWASE, J.) **(SMT. VIBHA KANKANWADI, J.)**

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