**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.2523 OF 2019**
**(Arising out of SLP(C) No. 994 of 2019)**

**SMT. SHANTABEN & ORS.** **APPELLANT(S)**

**VS.**

**NATIONAL POWER TRANSPORT & ANR.** **RESPONDENT(S)**

**JUDGMENT**

**Dinesh Maheshwari, J.**

Leave granted.

2. This appeal is directed against the judgment and order dated 14.03.2018, as passed in FA No. 1083 of 1993, whereby the High Court of Gujarat has dismissed the appeal filed by the claimants against the award dated 28.09.1992, as made by the Motor Accidents Claims Tribunal (Main) Kachchh at Bhuj in MACP No. 52 of 1987 and has declined the prayer for enhancement of the amount of compensation.

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3. On 07.01.2019, this Court had issued notice in the petition for Special Leave to Appeal against the impugned judgment and order dated 14.03.2018 'only to examine the non-award of future prospects while awarding compensation to the claimants keeping in view of the order passed by the Constitution Bench in the case of *National Insurance Company Limited v. Pranay Sethi and ors.* – SLP (Civil) No. 25599 of 2014 and batch'. The question in this appeal, therefore, is as to whether reasonable addition towards future prospects has not been provided while assessing the amount of compensation; and if so, what should be provided towards future prospects and what would be the amount of just compensation?

4. The background aspects of the matter, so far relevant for the question at hand, may be noticed, in brief, as follows:

(a) On 03.02.1987 at about 02.45 p.m., the victim Shri Narshibhai Dhanji Sathwara, while proceeding from IFFCO colony of Gandhidham to Ganeshnagar on a moped with his friend, met with an accident on being hit from behind by the offending bus bearing registration No. GTY 8608, owned by the respondent No. 1 and insured by the respondent No. 2. Both the moped riders succumbed to the injuries sustained in this accident.

(b) The claimants, being the wife, parents and sisters of the deceased Shri Narshibhai Dhanji Sathwara, made the claim for compensation in MACP No. 52 of 1987 while asserting that the deceased was 23 years of age and was earning about Rs. 3,000/- to Rs. 4,000/- per month by running a flour mill.

(c) In its award dated 28.09.1992, while holding that the accident in question occurred due to rash and negligent driving of the offending bus and that the respondents were liable to make payment of compensation, the Tribunal took up the process of assessment of the amount of compensation. In this regard, the Tribunal found that the flour mill in question belonged to the father of the deceased and no documentary evidence (like income tax returns or books of accounts etc.) as regards income of the deceased was adduced to substantiate the claim as made but, on an overall appreciation of the evidence on record, the Tribunal observed that the deceased was running the flour mill in the capacity of a manager and put an estimate on the gross earning of the deceased at Rs. 3,000/- p.m. However, the Tribunal provided for the elements of share of the father of deceased as also the expenditure on maintenance etc. and took the income of the deceased at Rs. 1462.50 p.m. and then, while making a few observations regarding inflationary trend of economy and prospective increase in income of the deceased, finally assessed his income at Rs. 1,800/- p.m.. Thereafter, the Tribunal deducted 1/3$^{rd}$ on the personal expenses and hence, took the loss of dependency for the claimants at Rs. 1,200/- per month i.e., Rs. 14,400/- per annum. The Tribunal applied the multiplier of 20 and in this manner, ultimately awarded Rs. 2,88,000/- towards pecuniary loss. With addition of Rs. 12,000/- towards conventional heads, the Tribunal awarded a total sum of Rs. 3,00,000/- towards compensation to the claimants together with interest @ 12% per annum from the date of filing the claim application.

(d) Against the award so made by the Tribunal, the claimants preferred an appeal before the High Court of Gujarat, seeking enhancement of compensation. It is noticed, as per the submissions made, that the parents of the deceased Shri Narshibhai Dhanji Sathwara expired during the pendency of the said appeal. The High Court, in its impugned judgment dated 14.03.2018, took the view that the Tribunal had calculated the income of the deceased rather on the higher side and found it not justified to provide for any enhancement. Hence this appeal.

5. Assailing the impugned judgment of the High Court, learned counsel for the appellants has strenuously argued that the High Court has erred in not applying the principles enunciated in *Pranay Sethi's case (supra)* as also in the case of *Magma General Insurance Co. Ltd. V. Nanu Ram: 2018 SCC Online SC 1546* and in not awarding just compensation in this case. *Per contra*, learned counsel for the contesting respondent has duly supported the judgment of the High Court.

6. We have heard learned counsel for the parties and have examined the record with reference to the law applicable.

7. In a comprehension of the award made by the Tribunal as also the judgment passed by the High Court, we are constrained to observe that the process of assessment of compensation in the present case had been too uncertain, rather vague, and unreasonably restrictive; and the amount as awarded to the appellants cannot be said to be that of just compensation. The

Tribunal in the first place took the gross income of the deceased at Rs. 3,000/- p.m. and thereafter, deducted 15% as return of investment to the father of the deceased and further deducted 35% towards maintenance and break down etc., and estimated his income at Rs. 1462.50 p.m. and then, with reference to inflationary trends of economy and prospective increase in income, took it at Rs. 1,800/- p.m.; and after deduction of 1/3$^{rd}$ on personal expenses, finally assessed the loss of dependency at Rs. 1,200/- p.m. The Tribunal, thereafter, applied the multiplier of 20 and in this manner, awarded Rs. 2,88,000/- towards pecuniary loss. The High Court proceeded in a moreover cursory manner by observing that the Tribunal had taken the income of deceased at Rs. 3,000/- p.m. and considered it to be rather on the higher side for the year 1987 while referring to the salary in other employments; and for this reason, the High Court found it not justified to allow any enhancement. Obvious it is that the considerations of the Tribunal as also of the High Court have gone too astray and the matter calls for interference. However, as observed, notice in the present case has been issued only on the question of consideration of future prospects.

8. As regards making a reasonable provision towards future prospects of enhancement in the income of the deceased, in this case, where the deceased was self-employed and was 23 years of age, an addition of 40% of the established income is required to be provided in view of the decision in *Praney Sethi* (supra). Further, for determination of multiplicand, it is noticed that the deceased had left behind his wife, mother and two minor sisters apart from his

father. Even if father of the deceased is not taken as dependent, it appears reasonable to take the number of his dependents as 4 and to provide for deduction of 1/4$^{th}$ for personal and living expenses. The deceased being 23 years of age and in the overall circumstances, multiplier of 18 would be appropriate in the present case.

9. Hence, even while taking the estimated income of the deceased at Rs. 1,800/- p.m. as assessed by the Tribunal and providing for 40% enhancement towards future prospects, the expected income of the deceased is taken at Rs. 2,520/- p.m and, after deducting 1/4$^{th}$ towards personal expenses, the loss of income for the claimants comes to Rs. 1,890/- p.m. i.e., Rs. 22,680/- per annum; and further, with application of multiplier of 18, the final figure towards loss of dependency comes to Rs. 4,08,240/- (22,680 x 18). The Tribunal, on this score, has awarded a sum of Rs. 2,88,000/- only. The claimants-appellants, therefore, would be entitled to further an amount of Rs. 1,20,240/-.

9.1 As noticed, the accident in question took place in the year 1987. The parents of the deceased had expired during the pendency of appeal before the High Court and the claimants-appellants in this appeal are the wife (appellant No. 1) and sisters (appellant Nos. 2 and 3) of the deceased. Having regard to the circumstances, it appears appropriate to provide that the enhanced amount of compensation (Rs. 1,20,240/-) shall be apportioned amongst the appellants in the manner that the appellant No. 1, wife of the deceased, shall be allowed 50%

thereof (i.e., Rs. 60,120/-); and each of the appellant Nos. 2 and 3, the sisters of the deceased, shall be allowed 25% (i.e., Rs. 30,060/- each).

9.2 It is noticed that the Tribunal has awarded interest @ 12% p.a. but, in the overall circumstances of the case and looking to the enhancement allowed in this appeal, it appears just and proper to provide that the enhanced amount of compensation shall be deposited by the respondent No. 2-insurer with the Tribunal within 30 days from the date of this judgment failing which, it shall carry interest @ 6% p.a. from the date of filing of the claim petition.

10. This appeal is allowed in part in the above terms and the award stands modified accordingly.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(DINESH MAHESHWARI)

New Delhi
Dated: 06th March, 2019.