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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.670 OF 2015**

1. Dr. Dhanashri Rajesh Deshmukh
Aged about 37 yrs.
2. Shri Shashikant Narayan Deshmukh
Aged about 77 yrs.
3. Smt. Kumud Shashikant Deshmukh
Aged about 73 yrs.
4. Master Harsh Rajesh Deshmukh
Aged about 7 yrs.
5. Kum. Isheetta Rajesh Deshmukh
Aged about 2 yrs.

Appellant Nos. 4 & 5 being minors
Represented through their mother
Natural guardian and next friend
Appellant No.1 All are residing at D-4,
Empress Mahal Dr. Ambedkar Road,
Khodadad Circle, Dadar T. T.,
Mumbai – 400 014.

...Appellants
(Orig. Applicants)

Versus

1. Saroj Kumar Behera
67, Dharma Vihar Khandagiri,
Dist. Khurd, Orrisa – 751 030
2. The National Insurance Co. Ltd.
United India Building, 3rd Floor,
Sir P M. Road, Fort,
Mumbai – 400 001.

...Respondents
(Orig. Opposite Party)

Mr. J. S. Kini a/w Mr. Aum Kini i/by Ms. Sapna Krishnappa for the Appellants.

Ms. Trupti Bharadi for Respondent No.1.

Ms. S. S. Dwivedi for Respondent No.2.

CORAM : JITENDRA JAIN, J.

DATE : 24 APRIL 2026

JUDGMENT:

1. By consent of the parties, the first appeal is taken up for final hearing.

2. This appeal is filed by the original claimant for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Mumbai ("Tribunal") by its order dated 16 August 2014. The Tribunal has awarded Rs.10 lakhs alongwith interest at 7.5% per annum. The basis of compensation towards loss of future income is considered by estimating notional income at Rs.8,000/- per month by relying upon the decision of the Hon'ble Supreme Court in the case of ***M. K. Gopinathan vs. J. Krishna & Ors.***¹. The age of the deceased was 41 years. The Tribunal has, however, passed "pay and recovery" order against the Insurance Company so that awarded amount can be recovered from vehicle owner.

3. On 26 June 2009, the deceased Mr. Rajesh Deshmukh was travelling in a Motor Jeep from Bhuvaneshwar to Paradeep Port when the said jeep collided with the stationary truck. The deceased sustained serious injuries and thereafter expired. The deceased was a Technical Engineer working as a Maritime Engineer, qualified from Pune University in the year 1991 and had done various courses with regard to the Maritime Industry conducted by the Government of India and others. Voluminous documents are attached in support thereof, which is not disputed.

SUBMISSIONS OF THE APPELLANTS:-

4. Mr. Kini, learned counsel for the appellants is primarily aggrieved by the decision of the Tribunal in considering only Rs.8,000/-

¹ (2015) 11 SCC 235

per month as notional income of the deceased. It is his submission that the claimants have led evidence of two persons with whom the deceased had worked with namely, M/s. Samson Maritime Limited and Herald Maritime Services to justify notional income of more than 1.60 lakhs per month. He submitted that after considering the evidence and the background of the deceased, the Tribunal was not justified in considering only Rs.8,000 per month as notional income of the deceased. He submitted that atleast Rs.1,59,932/- being the last drawn salary from M/s. Samson Maritime Limited should be considered for computing the compensation.

SUBMISSIONS OF THE INSURANCE COMPANY:-

5. Ms. Dwivedi, learned counsel for the insurance company has vehemently objected to the submission made by Mr. Kini. It is her case that the deceased was not in regular employment and the chart annexed with his employment application demonstrates that he was basically working on contract basis for a few months. She submitted that even if this employment of few months is considered, the submission of the claimant that Rs.1.59 lakhs should be considered would be on the higher side. She further submitted that the employment contract relied upon by the applicant from M/s. Samson Maritime Limited was not signed by the deceased and, therefore, such a document cannot be considered for the purpose of notional income. She submitted that the claimants have miserably failed to lead any evidence in support of their submission to claim notional income of Rs.1.59 lakhs per month. She vehemently defended the Tribunal's order of considering Rs.8,000/- per month as notional income.

6. I have heard Mr. Kini, learned counsel for the appellants, Ms. Bharadi, learned counsel appearing for respondent no.1-vehicle owner and Ms. Dwivedi, learned counsel for respondent no.2-insurance

company. Ms. Bharadi has not made any submissions on merits of the case. By a separate order, I have dismissed vehicle owner's appeal for not explaining delay of 938 days in filing the appeal.

ANALYSIS & CONCLUSIONS:-

7. The only issue which arises for my consideration is whether the Tribunal was justified in considering Rs.8,000/- per month as notional income of the deceased for the purpose of arriving at just and fair compensation ?

8. There is no dispute that the deceased was a Technical and Maritime Engineer qualified in the year 1991 from Pune University. The deceased had completed various courses, in the maritime field, conducted by the Government of India and other leading institutions. He had experience of 20 years upto the date of accident.

9. The applicants have produced following documents (which are not disputed) of the deceased in support of their plea with regard to his professional courses and experience :-

- (i) B.E. certificate from Pune University;
- (ii) Certificate of Diploma in Fabrication Technology;
- (iii) Certificate from Century Maritime Institute;
- (iv) Certificate of Competency as Maritime Engineer from Government of India;
- (v) Certificate from L.B.S. College of Advanced Maritime Studies & Research, Mumbai;
- (vi) Certificate from Ministry of Surface Transport, Government of India for Engine Room Simulator Course;
- (vii) Certificate from Shipping Corporation of India for Specialising in Tanker Safety Course;
- (viii) Certificate from St. Xavier's Technical Institute;

- (ix) Certificate from Fleet Management Training Institute;
- (x) Certificate from Marine Medical Clinic;
- (xi) Certificates from Republic of Panama and from Commonwealth of the Bahamas.

10. The engineers working in the maritime field are in high demand because of the nature of their work. It is a known fact that the persons working on vessels irrespective of their nature of work earn much more than the persons doing similar work on land. This is so because of the fact that a person working on the vessel has to be offshore for substantial period of time. Therefore, while considering the nature of income of a person related and connected with the maritime industry same has to be higher than the similar persons earning on the shore. This would be true whether he is in regular employment or working on contract basis for a short period. A professional specialising in a particular branch would always command premium than others. This is true in all fields whether it is medicine, law, accountancy etc.

11. The claimants have led the evidence of M/s. Samson Maritime Limited, who by letter dated 19 June 2009 had agreed to take the deceased on employment for compensation of Rs.1,59,932/- for the period from 19 June 2009 to 31 March 2010. The HR officer of M/s. Samson Maritime Limited appeared as a witness and was cross-examined by the insurance company. The officials of M/s. Samson Maritime Limited admitted such a contract having been entered into between his company and the deceased. Merely because the contract did not bear the signature of the deceased, the Tribunal cannot reject the evidence led by the claimants more so because accident happened while he was travelling for M/s. Samson Maritime Limited to Paradeep Port for a visit.

12. Even assuming that there was no agreed contract because the deceased had not signed the employment contract dated 19 June 2009, still the Tribunal ought to have considered that document as a basis for

arriving at a just and fair notional income of the deceased. It is not suggested that M/s. Samson Maritime Limited was related to the deceased or the evidence led is untrue. It is also important to note that within few days of the date of employment, the deceased expired. It is unfortunate, but still it cannot cast a doubt on the genuineness of the document moreso, when the insurance company had full opportunity and which they did avail by cross-examining the official of M/s. Samson Maritime Limited and in the cross-examination nothing untoward has surfaced for rejecting the submission that the deceased was not capable of earning atleast Rs.1.59 lakhs per month. In my view, this could have been the basis, if not for accepting Rs.1.59 lakhs, but atleast for estimating a reasonable sum considering the qualifications and experience of the deceased.

13. The Tribunal on one hand observes that the deceased was not in employment with M/s. Samson Maritime Limited but in paragraph 30 of its order directs deduction of Rs.5 lakhs being compensation received from M/s. Samson Maritime Ltd. by observing that the same is received from the employer. This finding is self contradiction in itself. Also, it is unimaginable that M/s. Samson Maritime Limited would pay Rs.5 lakh as compensation when within few days of employment, Mr. Rajesh Deshmukh died unless he was really employed. Therefore, though, the employment agreement may not have been signed by Mr. Rajesh Deshmukh but signed by M/s. Samson Maritime Limited and based on the evidence of M/s. Samson Maritime Limited, it cannot be inferred that the deceased was not employed by M/s. Samson Maritime Limited. Also, the deceased met with the accident when he was travelling from/to Paradeep Port at Orissa for the work of M/s. Samson Maritime Limited. Therefore, for these reasons also the Tribunal's finding of estimating Rs.8,000/- per month as notional income by rejecting evidence cannot be sustained.

14. The claimants have also led evidence of Herald Maritime Services who entered the witness box and stated that the deceased was paid Rs.2.50 lakhs during January/February 2009 for working with them for 40 days. Even the official of Herald Maritime Services was cross-examined by the insurance company but nothing adverse has come out to reject the evidence of Herald Maritime Services. The Tribunal should have atleast considered this evidence for estimating just and fair notional income, though not for accepting totally what was stated by Herald Maritime Services.

15. The learned counsel for the insurance company has vehemently relied upon the application form filed by the deceased with M/s. Samson Maritime Limited in which the deceased with respect to his employment background has stated that he was in employment for the period ranging between two months to six months every year. This Court cannot lose sight of the fact that a person employed in the maritime industry on a vessel works on the vessel not for full 12 months. In any case, this does not take the case of the insurance company any further in the light of the evidence led by the claimant of M/s. Samson Maritime Limited and Herald Maritime Services. Even for the sake of arguments, if the contention of the learned counsel for the insurance company is accepted, then it will be a factor for not accepting the full claim of the claimant but certainly it cannot be a factor for justifying mere Rs.8,000/- per month as notional income of the deceased as estimated by the Tribunal in the facts of the present case.

16. This Court, therefore, rejects outrightly the estimate of Rs. 8,000/- per month as notional income of the deceased as estimated by the Tribunal.

17. Before me, I have evidence of M/s. Samson Maritime Limited which proves that Rs.1.59 lakhs per month was offered to the deceased.

At the same time, the evidence of Herald Maritime Services shows an income of Rs.2.50 lakhs for 40 days. Therefore, it boils down to estimate to be made by the Court. In my view, the best evidence led by the claimants is that of M/s. Samson Maritime Limited and Herald Maritime Services, which has gone unrebutted and which indicates the income of the deceased at Rs.1.59 lakhs per month. At the same time the insurance company, is to some extent, may be justified in submitting that the deceased was not in regular employment since 1991. Therefore, to balance the equity of both the parties, in my view and after considering the evidence of M/s. Samson Maritime Limited, Herald Maritime Services, qualifications and experience of the deceased and the nature of the industry with which the deceased was connected, Rs.1.25 lakhs per month would be a reasonable amount for arriving at the compensation.

18. The figure of notional income, which I have estimated at Rs.1,25,000/- can also be examined from another angle. On evidence, it has come on record that just prior to the death, the deceased was offered Rs.1,59,000/- (even if the submission of the insurance company is accepted that there was no concluded contract) though in the cross-examination, the witness from M/s. Samson Maritime Limited has accepted the deceased being employed. The applicants have also led evidence of Herald Maritime Services and in the cross examination, Herald Maritime Services have accepted that they have paid Rs.2,50,000/- for the period 9 January 2009 to 17 February 2009 for 40 days.

19. If the average of Rs.2.50 lakhs and Rs.1.59 lakhs is taken, then the same works out to Rs.2 lakhs approximately per month. If the submission of the insurance company that the deceased was not in regular employment is considered, then same can be discounted by 40%. Still, after discounting by this percentage, the notional income

would be Rs.1,20,000/- and, therefore, the figure of Rs.1,25,000/- is justified. Therefore, looked from any angle, in my view, just and fair income of the deceased can be taken at Rs.1,25,000/- per month.

20. In the compilation of documents, appellants have filed appointment letter of 18 May 2006 from Ebony Ship Management Private Limited, Mumbai signed by deceased offering salary of Rs.4,615 per month USD which if converted by 1USD=Rs.47, works out to Rs.2,16,000/- approximately. The accident happened in 2009, therefore, after 3 years, salary certainly would be more than Rs.2,16,000/- per month, if not less. Therefore, even if this evidence is considered and discounted by 40% on account of his not being in regular employment, still the notional income would be Rs.1,29,000/- per month, more than what I have estimated at Rs.1,25,000/- per month.

21. If one searches the portal of various recruitment sites for the salary of an engineer working on vessels having 20 years of experience, at present it would be Rs.8-10 lakhs per month and in the year 2009 it would have been Rs.4-5 lakhs. Even if the non-regularity of the deceased in employment is considered, still by discounting 40%, salary would be Rs.2 lakhs.

22. The decision of the Hon'ble Supreme Court relied upon by the Tribunal in the case of *M. K. Gopinathan (supra)* is not applicable to the facts of the present case. In the case before Hon'ble Supreme Court, claimant did not lead any evidence for claiming Rs.50,000/- salary. In the instant case before me, claimants have led substantial, documentary and oral evidence of companies who had paid the deceased. These evidences have passed the test of veracity in cross-examination also. The claimants before the Hon'ble Supreme Court had not produced certificate of qualification and experience, whereas before me the claimants have produced voluminous certificates from Government of India and Foreign

institutions in the field of maritime. It was in these factual circumstances that the Hon'ble Supreme Court estimated Rs.8,000/- per month since the claimant being an engineer was not disputed. Therefore, on facts, decision in the case of *M. K. Gopinathan (supra)* is not applicable to the appeal before me.

23. The Hon'ble Supreme Court in the case of *Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr.*² granted Rs.25,000/- per month compensation to a deceased who was a medical student and died in an accident in the year 2002 after considering his future as an M.D. In my view, this estimate by the Hon'ble Supreme Court justifies my estimate of Rs.1,25,000/- in the facts of the present case, where the deceased was a highly qualified engineer specialising in maritime industry on vessel and having experience of 20 years on the date of the accident.

24. The deceased would have been liable to pay tax on this sum and the average rate of tax after considering basic exemption, deduction etc. can be estimated at 25%.

25. The other submission made by the learned counsel for the insurance company is that the wife and parents were not dependent but at the same time, the deceased had two children. Therefore, the deduction towards personal expenses should be on the higher side. I agree with the learned counsel for the insurance company and the deduction towards the personal expenses should be considered at 1/3rd.

26. The compensation after considering the decision of *National Insurance Company vs. Pranay Sethi & Ors.*³, and after estimating the notional income of Rs.1.25 lakhs as observed above and considering deduction of 1/3rd towards personal expenses, final compensation works out as under :-

2 (2015) 2 SCC 180

3 (2017) 16 SCC 680

Sr.	Particulars	Amount
1.	Income Per month	Rs.1,25,000/-
2.	Future Prospects (25% of income)	Rs.31,250/-
3.	Total Annual Income (Rs.1,25,000/- + Rs.31,250/-) x12	Rs.18,75,000/-
4.	Annual income after deduction towards personal expenses (1/3 rd) (Rs.18,75,000 (Less) Rs.6,25,000)	Rs.12,50,000/-
5.	Multiplier 14 (Rs.12,50,000 x 14)	Rs.1,75,00,000/-
6.	Amount of Compensation (Less) Income Tax 25% of 1,75,00,000/- (1,75,00,000 – 43,75,000)	Rs.1,31,25,000/-
7.	Funeral Expenses	Rs.15,000/-
8.	Loss of Estate	Rs.15,000/-
9.	Loss of Spousal Consortium	Rs.40,000/-
10.	Total Compensation to be paid	Rs.1,31,95,000/-

27. The enhanced compensation which the claimants would now be entitled would be Rs.1,21,95,000 (1,31,95,000/- (**Less**)10,00,000/-). The claimants would be entitled to the enhanced amount and also the original amount awarded by the Tribunal, alongwith interest at 7.5% per annum from the date of petition filed with the Tribunal. If the amount is deposited and/or withdrawn or paid to the claimants, then no interest shall accrue on the amount withdrawn or paid from the date of such payment or deposit or withdrawal. The differential alongwith interest amount should be deposited by the insurance company within 12 weeks from today and the claimants would be entitled to withdraw the same. Other than what is stated above, the rest of the findings of the Tribunal are not disturbed. The compensation under the head of funeral expenses, loss of estate and loss of consortium is being granted in accordance with the decision of *Pranay Sethi (supra)*.

28. Insofar as the order of pay and recovery is concerned, the findings of the Tribunal are not disturbed.
29. The appeal is disposed of in above terms.

[JITENDRA JAIN, J.]