



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 109 OF 2019

The New India Assurance Co. Ltd.,
Thru. Its Authorised Signatory, Aurangabad,
Shri. Achyut Purushatam Kulkarni ... Appellant

Versus

1. Smt. Sharda W/o. Vishwajeet Patil
2. Kum. Tanmai D/o. Vishwajeet Patil
3. Ishwarlal Kantilal Ostwal
4. Arun Balasaheb Patil
5. Sau. Nalini Arun Patil ... Respondents

...
Advocate for Appellant : Mr. M.M. Ambhore
Advocate for Respondent Nos. 1, 2, 4 & 5 : Mr. Yuvraj Kakde
Advocate for Respondent No. 3 : Mr. Abhay Ostwal
i/b. Mr. Kartavya Ostwal

...

CORAM : ABHAY J. MANTRI, J.

DATE : 19th NOVEMBER, 2025

ORAL JUDGMENT:

1. Original respondent no. 2 / Insurance Company aggrieved by the judgment and award dated 13.04.2018, passed by learned Chairman, Motor Accident Tribunal, Ahmednagar (for short '*the Tribunal*'), in MACP No. 211/2014, whereby, the claim of the claimants

was allowed. Original respondent nos. 1 and 2 were directed to pay jointly and severally an amount of Rs. 49,50,000/- with 9% p.a. interest to the claimants, who have preferred this Appeal.

2. Facts in a nutshell are as follows:

On 18.03.2014, the deceased, Vishwajeet, was proceeding towards Pandhari Pool on his motorcycle no. MH-16-BA-2462 (for short, '*Motorcycle*'), from his house. At about 11:00 am, on the way in front of the house of one Adinath Kale, a dumper no. MH-17-A-6155 (for short, '*the dumper*') came from opposite side in high speed and rash and negligent manner and gave a dash to his motorcycle. Due to a dash, he suffered grievous injuries and died on the spot. Accordingly, a crime was registered against the driver of the dumper at Sonai police station. The respondent no. 1 is the owner of the dumper and said dumper was insured with respondent no. 2 – Insurance Company.

3. The deceased was 27 years old. He had completed his Civil Engineering and was employed at Minerva Infra Raj Chamber, Kothala, Ahmednagar, and was receiving a salary of Rs. 23,800/- per month. The claimants, being the widow and daughter, were dependent on him. Respondent nos. 3 and 4 are the parents of the deceased. Due to his death, they suffered a lot. Hence, they have filed the claim petition.

4. Respondent no. 1, though, appeared to have failed to file the written statement; hence, the petition proceeded ex parte against him.

5. Respondent no. 2 filed the written statement and denied the contents of the petition. It is contended that the driver of the dumper was not holding a valid driving license and, thereby, respondent no. 1 breached the terms and conditions of the policy. Accordingly, urged the dismissal of the petition against it.

6. Respondent nos. 3 and 4 admitted the contents of the claim petition. They only contended that part of the compensation be paid to them.

7. Based on the rival pleadings of the parties, the learned Tribunal framed the issues. Pursuant to the issues, the claimants have led the evidence and produced and proved the documents. On the other hand, respondent nos. 1 and 2 failed to adduce any evidence in support of their defence. After considering the evidence on record, the learned Tribunal allowed the petition. Being aggrieved thereby, the Insurance company has preferred this Appeal.

8. The learned Advocate for the Insurance Company vehemently contended that the Insurance Company has preferred appeal only on the point of quantum, on three grounds.

- (i) **First** is that the learned Tribunal has erred in granting 50% compensation under the head of future prospects instead of 40% as the deceased was working in a private company.
- (ii) **Second**, at the time of the accident, the deceased was 31 years old.
- (iii) *The third ground is that respondent no. 4 herein, i.e., the father of the deceased, was not dependent on him and, therefore, there are only three dependents. Accordingly, 1/3rd of the amount must be deducted for personal expenses of the deceased, rather than 1/4th. Thus, he urged that the appeal be allowed.*

9. *On the other hand*, the learned Advocate for the respondent nos. 1, 2, 4 and 5, i.e., the widow, daughter and parents of the deceased, vehemently contended that at the time of the accident, the deceased was 27 years old. The learned Tribunal has rightly considered the documents on record and held that the deceased was 27 years old. **Secondly**, he submitted that the respondents have produced the salary slip and account statement on record, which indicate the deceased's salary as Rs. 22,640/-per month. **Thirdly**, he submitted that the widow, daughter, and parents were dependent on the deceased, and the witness categorically deposed about the same. However, the Insurance Company has not

challenged or denied the same, and therefore, the finding recorded by the learned Tribunal is just and proper. However, '*he does not dispute that the learned Tribunal has granted 50% towards the future prospects, rather than 40%.*' Lastly, he submitted that the learned Tribunal did not award the amount under the non-pecuniary head, i.e. loss of funeral expenses, as laid down in *National Insurance Company Ltd. Versus Pranay Sethi and Others, (2017) 16 SCC 680* and *Magma General Insurance Co. Ltd. Versus Nanu Ram, (1018) 18 SCC 130*. He has pointed out paragraph no. 27 of the impugned judgment and submitted that, as the claimants have filed a claim petition claiming compensation of Rs. 50 lakhs; therefore, the Tribunal has awarded only Rs. 50 Lakhs as per the claim petition, and, consequently, he submitted that the same is liable to be enhanced as calculated by the Tribunal. Therefore, he urged that the compensation be modified in the appeal.

10. Learned Advocate for the respondent no. 3 submitted that the offending vehicle was insured with appellant / Insurance Company and, therefore, respondent no. 3 is not liable to pay the compensation. As such, he urged the passing of the appropriate order.

11. Having heard the learned counsel for the respective parties and perusal of the impugned judgment and record, the following point arises for determination :

“(i) Whether any interference is required in the impugned judgment and order in the appeal ?”

12. It is pertinent to note that neither the claimants nor the respondent. 3, the owner of the offending vehicle has preferred any appeal against the impugned judgment. It appears that neither party has any grievance with the finding recorded by the learned Tribunal and, therefore, has not filed any appeal. As such, the said findings are binding on them.

13. It is worth noting that none of the parties have disputed that the claimants are entitled to get the compensation in view of the mandate in *Pranay Sethi* (supra) and *Magma General Insurance Co. Ltd.* (supra).

14. The first ground raised by the learned Advocate of the appellant is that the learned Tribunal erred in awarding 50% towards the future prospect to the claimants instead of 40%. He has drawn my attention to the salary certificate and the other documents produced by the claimants, which indicate that the deceased was in a private job. Moreover, the learned Advocate for respondent nos. 1, 2, 4 & 5 has not disputed that, if the deceased was employed in a private job, the claimants are entitled to the addition of 40% towards the future prospects. In view of the same, I found substance in the contention of

the learned Advocate for the appellant in that regard. Accordingly, the finding that 50% of the actual salary, in addition to existing income, is to be allocated towards the future prospectus should be modified to 40% in addition to existing income. Thus, I have no hesitation in holding that the claimants are entitled to compensation under the head of future prospects to the extent of **40%** of the amount. Accordingly, the said finding is modified.

15. The learned Advocate for the appellant raised the second ground, that the deceased was 31 years old. However, nothing has been brought on record to show that the deceased was 31 years old. It is pertinent to note that the appellant has not raised the ground in the written statement that the deceased was 31 years old or that his age was above 30 years. Similarly, no suggestion was put to claimant no. 1 that the deceased was 31 years old or older than 30 years old. On the contrary, PW 1 – Sharda, in her evidence in paragraph no. 4, categorically deposed that at the time of the accident, her husband was 27 years old. During her cross-examination, she also deposed that her husband's date of birth was 30 June 1986. Her testimony was supported by the date of birth recorded on the PAN card. Thus, it seems that at the time of the accident, the deceased was between the age group of 25 and 30 years and not above the age of 30 years. Therefore, I do not find

substance in the argument of the learned Advocate for the appellant in that regard.

16. *The third* ground was raised by the learned Advocate for the appellant in respect of the dependency of the widow, daughter, and parents of the deceased. It is pertinent to note that in paragraph no. 14 of the claim application, the widow and daughter, along with the parents, were claimed to be dependent on the deceased. The said contention was neither denied nor challenged by the appellant/Insurance Company in their written statement. Similarly, in paragraph no. 5 of the examination-in-chief, claimant no. 1 in her testimony categorically deposed that all the claimants were dependent on the deceased. However, the said testimony was neither challenged nor denied by the Insurance Company or any other respondents. Therefore, there is no reason to discard the said testimony. As such, I do not find substance in his contention that the father was not dependent on the deceased. Hence, his argument is rejected.

17. Now, the crucial question that arises before me is how much compensation the claimants are entitled to get. Perused the impugned judgment. It appears that the learned Tribunal, after considering the judgment of the Hon'ble Apex Court in *Pranay Sethi* (supra), has awarded the compensation. In paragraph no. 26, the learned Tribunal has

observed that the claimants are entitled to Rs. 70,000/- towards loss of estate, loss of consortium and loss of funeral expenses. However, in view of the judgment *Pranay Sethi* (supra), in my considered view, the said finding is required to be modified as per the mandate in *Pranay Sethi and Magma General Insurance Co. Ltd.* (supra). All claimants are entitled to receive compensation under the head of consortium, to the extent of Rs. 40,000/-, with a 10% increase for every three years. Similarly, the claimants are entitled under the head of loss of estate and funeral expenses to Rs. 15,000/- each, with a 10% increase thereon for every three years. To that extent, judgment and award are required to be modified. Similarly, in paragraph no. 27, the learned Judge has observed that claimants have sought compensation to the extent of Rs. 50 Lakhs, and accordingly, he has restricted the award of the claim, though the learned Judge has calculated it at Rs. 52,19,980/-, which is higher than the specified amount. Therefore, in my view, the said finding is liable to be set aside, as the Hon'ble Apex Court, in a catena of judgments, has held that the claimants are entitled to just compensation; although they have not claimed it, they are entitled to the same. Therefore, the said finding is liable to be modified.

18. In view of the above discussion and mandate laid down in *Pranay Sethi* and *Magma General Insurance Co. Ltd.* (Supra), it would be

appropriate to determine the compensation to which the claimants are entitled, as under :

Calculation of Compensation	
Income of the deceased (monthly Rs. 22,640/-)	Rs. 2,71,680/- p.a. (22640 x 12)
Future prospect 40% (as he is not a permanent employee)	Rs. 1,08,672/-
Personal expenses (1/4th) for four dependents (Rs. 3,80,352 x 1/4)	Rs. 95,088/-
Income after deduction towards personal expenses	Rs. 2,85,264/-
Multiplier (Age 26 - 30 years)	17
Loss of income (Rs. 2,85,264 x 17)	Rs. 48,49,488/-
Loss of consortium (Rs. 48,400 x 4 dependents)	Rs. 1,93,600/-
Loss of estate	Rs. 18,150/-
Funeral expenses	Rs. 18,150/-
Total	Rs. 50,79,388/-

19. Thus, it appears that claimants are entitled to Rs. 50,79,388/- (Rupees fifty lakhs seventy-nine thousand three hundred and eighty eight) amount of compensation. In view of the above, *I answer point no. (i) in the affirmative and accordingly, modified the impugned judgment* as under :

Consequently, the appeal is partly allowed to the extent that the entitlement to compensation for future prospects is reduced from 50% to **40%**.

20. The rest of the order is modified as follows :

The original respondents, nos. 1 and 2, shall be jointly and severally liable to pay the sum of Rs. **50,79,388/-** (Rupees fifty lakhs seventy-nine thousand three hundred and eighty-eight) to the claimants, along with interest at a rate of 9% p.a. The appellant and respondent no.3 are jointly and severally directed to deposit the entire compensation amount in this Court, along with interest accrued thereon (after adjusting the amount deposited in this Court), within a period of eight weeks from the receipt of the copy of this order.

21. On depositing the amount to the extent of 50% along with proportionate accrued interest thereon, be paid to the claimant no. 1 – Sharda, including the amount already received by her. Then 30% shall be paid to the daughter, claimant no. 2 – Ku. Tanmai, along with the proportionate interest accrued thereon. The amount of the share of the claimant no. 2 – Ku. Tanmai should be kept in a fixed deposit till she attains the age of majority. The remaining 20% amount, of which 10% each will be paid to the parents, namely respondent no. 4 – Arun and respondent no. 5 – Nalini. Appeal is accordingly modified and disposed of. (If, after payment of the amount of compensation as determined above, if any, amount deposited by the Insurance Company remains in this Court in excess, then the same be returned to them along with the accrued proposed interest.)

22. Needless to clarify that if the Tribunal grants an amount of compensation that is less than the amount of compensation granted by this Court, then the original respondents are directed to deposit the same in this Court within a period of eight weeks from receipt of a copy of this order. The award shall be prepared accordingly, and the amount will be paid to the claimants.

(ABHAY J. MANTRI, J.)

SPC