

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 177 OF 2009

**1. Sharadaben Mahendrakumar
Panchal**, widow of the deceased

2. Shri Kirankumar Mahendrakumar Panchal
Son of the deceased

3. Miss Pravina Mahendrakumar Panchal
Daughter of the deceased
All R/at :- Room No. 6, Chawl No. 4,
Beretto Compound, Marve Road,
Malad (W), Mumbai – 400 064.

...Appellants

Vs.

1. Shri Salauddin Ahmedbhai Manva
Hindustan Transport, Sayra Road,
Modasa Sabarkanta, Gujarat

2. United India Insurance Co. Ltd.
Mumbai Regional Office No. I,
5th Floor, Statidum House,
Veer Nariman Road Churchgate,
Mumbai – 400 020.

...Respondents

Mr. T. J. Mendon	Advocate for the Appellants
Mr. H. G. Misar	Advocate for the Respondent No. 2

CORAM : S. M. MODAK, J.

DATE : 25th AUGUST 2026

JUDGMENT :-

1. Heard learned Advocate Shri Mendon for the Appellants/original Claimants and learned Advocate Shri Misar for the Respondent No. 2-Insurer.

2. Deceased-Mahendrakumar Bhikhabhai Panchal was driving a motor car on Mumbai-Ahmedabad Highway and when his vehicle reached near Dhundalwadi on 24.09.1999, at that time, the motor lorry came from wrong side and in the process of overtaking, motor lorry dashed to the motor car. Mahendrakumar Panchal sustained injuries and he died on the spot. The deceased was carrying business in the name and style of Kiran Industries. His annual income was Rs. 1,30,000/-. Though in the claim petition, the Claimants have not referred about return, during evidence the Claimants have produced two income tax returns for the assessment year 1996-97, showing the income as Rs. 46,000/- and for the assessment year 1997-98, showing the income as Rs. 2,26,432/-. The learned Tribunal has arrived at monthly income of the deceased to Rs. 50,000/- and subsequently calculated the benefits.

3. This part of the findings is challenged by the Claimants by way of this appeal. The Appellant No. 1- Sharadaben is widow. Whereas Appellant No. 2- Kirankumar is son and Appellant No. 3-Pravina is daughter. The Tribunal has given findings on the point of negligence against the driver of the lorry. There was F.I.R. registered against the lorry of driver. The Tribunal has also considered the spot panchnama. Though the plea of the breach of the policy and absence of permit was taken, the Insurance Company could not prove it. There is no challenge about these findings.

4. So the issue is limited about exact amount of the income of the deceased.

5. Both of them have invited my attention to the affidavit filed by the Sharadaben being the wife of the deceased. She has referred about yearly income of the deceased Rs. 1,30,000/-.

6. Mr. Misar has invited my attention to the answer given by her during cross-examination. She has stated that her husband was earning Rs. 10,000/- per month. He also emphasized that accident took place on 24.09.1999 and the return for the assessment year 1999-00 was not filed. Mr. Mendon has got an explanation to offer. It is for the reason

that Mahendrakumar was not alive when time for submitting the return has arrived at as he died on 24.09.1999.

7. Be that as it may, the Tribunal has to consider what is evidence on record. The Tribunal was having oral evidence of the widow on one hand and two returns on the other hand. It is pertinent to note that these returns were filed when the deceased was alive. The Tribunal is bound by what is stated in the returns. So, the mere answer given by the widow during her cross-examination cannot be construed to the detriment of the Appellants, because there is documentary evidence available to assist the Court to arrive at monthly income of the deceased.

8. The Tribunal no doubt has considered the yearly income of Rs. 46,000/- for the year 1996-97. The tribunal has also recorded about the assessment year 1997-98. However, the yearly income has not referred by the Tribunal in that part of the judgment. On internal page no. 9 of the judgment, the Tribunal further observed :-

“Due to death of her husband, the business was closed down and they are not having any other source of income”.

9. On this background, the annual income of the deceased was

considered by the Tribunal was Rs. 50,000/- p.a.. This is certainly erroneous findings.

10. It is for the reason, the annual income for the next assessment year 1997-98 was not considered. It is Rs. 2,26,432/-. If simultaneously reading of these returns, it reveals that income of the deceased has increased from the earlier assessment year.

11. It is admitted fact that even the widow has not said in her oral evidence about the annual income of the deceased in next assessment year i.e. 1999-2000. So Court has to do some guess work. In the return for the assessment year 1996-97, the gross total income shown is Rs. 46,000/-. Whereas for the assessment year 1997-98, gross total income shown is Rs. 2,26,432/- (income from the salary and income from the capital gains). So if this gross total income of Rs. 2,26,432/- is considered also for the next assessment year, then monthly income comes to Rs. 18,869.33/-. However, in absence of the mention in the affidavit of widow and in absence of return for next assessment year, this Court records that monthly income of the deceased ought to have been for Rs. 15,000/-.

12. One more interference is required is interest ought to have been

granted from date of petition and not from date of trial i.e. 20.06.2007.

The Tribunal has not given any reasoning for granting interest from date of trial so to say delay on the part of Claimants. So it has to be from date of the petition.

13. Learned Advocate Mr. Misar is right. The interest rate ought to have been @ 6% instead of 7.5%.

14. In view of that the compensation recalculated is as follows:-

Name of the deceased	Mahendrakumar Bhikhabhai Panchal	
Age of deceased	39	
Income considered	Rs. 15000/-	
Future Prospect (15,000 X 40%)	Rs. 6000/-	
(Rs. 15000 + Rs. 6000)	Rs. 21,000/-	
Personal expenses (1/3) – 21,000 X 1/3=7000	Rs. 7,000/-	
Rs. 21000 – Rs 7000 =	Rs. 14,000/-	
Multiplier 18 Rs. 14000 X 12 X 15	Rs. 25,20,000/-	A
Consortium for 3 Claimants (Rs. 48,000X 3)	Rs. 1,44,000/-	B
Funeral Expenses	Rs. 18,000/-	C
Loss of Estate	Rs. 18,000/-	D
Total (A+B+C+D)	Rs. 27,00,000/-	E
(Less) Tribunal granted	Rs. 4,68,290/-	F
Enhancement amount (E-F)	Rs. 22,31,710/-	G

15. Hence, following order :-

ORDER

- (i) The First Appeal is allowed.
- (ii) The award dated 28.01.2008 passed by Member MACT, Mumbai in Application No. 4629 of 1999 is modified.
- (iii) Appellants are entitled to enhanced amount subject to deposit of deficit court fees.
- (iv) Respondent Nos. 1 and 2 are directed to deposit the amount of Rs. 22,31,710/- jointly and severally within the period of eight weeks from today alongwith interest at the rate of 6 % from the date of petition till the payment.
- (v) On deposit of the amount, the Tribunal is directed to apportion 60% to Appellant No. 1, 20 % to Appellant No. 2 and 20% to Appellant No. 3.
- (vi) The Tribunal to confirm whether the Appellant No. 2 and Appellant No. 3 have attained majority and if they have not attained the majority, the amount be paid to Appellant No. 1 being their natural guardian.

(vii) Record and proceedings be transferred on a priority basis in any eventuality, within a period of four weeks from today.

16. With the above observations, the First Appeal is disposed of.

[S. M. MODAK, J.]