

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

First Appeal No. 600 of 2014

1. Smt. Mangal w/o. Savta Gadade,
Age : 32 years,
Occupation : Household.
2. Haribhau s/o. Savta Gadade,
Age : 16 years,
Occupation : Education.
3. Miss. Sonali d/o. Savta Gadade,
Age : 15 years,
Occupation : Education.
4. Nikhil s/o. Savta Gadade,
Age : 14 years,
Occupation : Education.

Appellant Nos.2 to 4 are minor,
through their legal Guardian
i.e. Appellant No.1.

5. Laxman s/o. Tukaram Gadade,
Age : 61 years,
Occupation : Nil.
6. Gangubai w/o. Laxman Gadade,
Age : 58 years,
Occupation : Nil.

All R/o. Chandgaon,
Taluka : Shrigonda,
District : Ahmednagar.

.. Appellants
(Original claimants)

versus

1. Hiralal s/o. Tejmal Sharma,
Age : 60 years,
Occupation : Business / Owner,
R/o. Baradgaon Dagadi,
Taluka : Karjat,
District : Ahmednagar.

2. The Manager,
The Oriental Insurance Company Ltd.,
Near Old S.T. Stand,
Old Ahmednagar,
District : Ahmednagar.

.. Respondents.

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Mr. D.R. Jayabhar, Advocate, for appellants.

Mr. Abhay Ostwal, Advocate, for respondent no.1.

Mr. Dhananjay Deshpande, Advocate, for respondent no.2.

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With

First Appeal No. 602 of 2014

Smt. Mangal w/o. Savta Gadade,
Age : 32 years,
Occupation : Household,
R/o. Chandgaon,
Taluka : Shrigonda,
District : Ahmednagar.

.. Appellant
(Original claimant)

versus

1. Hiralal s/o. Tejmal Sharma,
Age : 60 years,
Occupation : Business / Owner,
R/o. Baradgaon Dagadi,
Taluka : Karjat,
District : Ahmednagar.

2. The Manager,
The Oriental Insurance Company Ltd.,
Near Old S.T. Stand,
Old Ahmednagar,
District : Ahmednagar.

.. Respondents.

.....

Mr. D.R. Jayabhar, Advocate, for the appellant.

*Mr. Kiran Jadhav, Advocate, holding for
Mr. Abhay Ostwal, Advocate, for respondent no.1.*

Mr. Dhananjay Deshpande, Advocate, for respondent no.2.

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CORAM : A.M. BADAR, J.

DATE : 20TH NOVEMBER 2015

ORAL JUDGMENT :

1. Admit. By consent of the learned Counsel appearing for the parties, heard finally.
2. Both these appeals are arising out of the same accident. One is regarding death claim in respect of rider of the motorcycle and the another is regarding injury claim of the victim of the vehicular accident. As such, both these appeals are being decided by this common judgment.
3. First Appeal No. 600 of 2014 is filed by dependent legal representatives of deceased Savta Gadade who died in the vehicular

accident, for enhancement of compensation awarded by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar, **[For short, hereinafter referred to as “Tribunal”]** in M.A.C.P. No. 518/2009, on 2-7-2013. First Appeal No. 602 of 2014 is filed by injured Mangal Savta Gadade who was pillion rider on the motorcycle with rider deceased Savta. She is also praying for enhancement of compensation awarded by the learned Tribunal in M.A.C.P. No. 514/2009 on 2-7-2013. Respondent no.1 in both these appeals was respondent no.1 in original proceedings. He is owner of the offending Tata Safari vehicle bearing registration No. MH-16/AB-3519. Respondent no.2 herein (Insurer) was respondent no.2 in proceedings before the learned Tribunal. In the death claim, the learned Tribunal awarded compensation of Rs. 5,85,000/- to the claimants. In injury claim, compensation of Rs. 4,74,000/- was awarded to injured Mangal. Interest was awarded at the rate of 7.5 % per annum in both the proceedings. For the sake of convenience, parties shall be referred in their original capacity.

4. The facts leading to the institution of both these proceedings can be summarized thus :-

(a) On 31-5-2009, Savta (since deceased) was riding the motorcycle with his wife claimant Mangal (Claimant in M.A.C.P. No. 514/2009) and his paternal aunt Girjabai as pillion riders. He was proceeding from Chandgaon to Adhalgaon with these two pillion riders. The accident happened at Hirgaon Square. According to claimants, Tata Safari vehicle owned by respondent no.1 and insured with respondent no.2, came from the direction of Shrigonda and it wanted to proceed towards Karjat.

Instead of proceeding straight from the square, driver of the Tata Safari vehicle took wrong turn requiring him to undertake U-turn for proceeding in right direction. In the process of taking abrupt U-turn, Tata Safari vehicle gave a forceful dash to the motorcycle on which deceased Savta, claimant Mangal and another pillion rider Girjabai were proceeding. In both these claim petitions, claimants have come up with with stand that the accident had happened because of sole negligence of the driver of the Tata Safari vehicle. With these averments, on all counts, on account of death of Savta, his dependent legal representatives lodged a claim of Rs. 25,75,000/- and restricted it to Rs. 10,00,000/-. On account of injuries suffered by her in this vehicular accident, claimant Mangal (M.A.C.P. No. 514/2009) estimated damages at Rs. 22,25,000/- and restricted her claim to Rs. 10,00,000/- on all counts.

(b) Respondent no.1 - owner in both these claim petitions failed to to file written statement. By filing written statement at Exhibit 15 in M.A.C.P. No. 518/2009 regarding death claim and at Exhibit 11 in M.A.C.P. No. 514/2009 regarding injury claim, respondent no.2 - Insurance Company opposed both these claim petitions. The Insurance Company came up with a stand that the accident was caused because of sole rash and negligent act on the part of Savta. He was riding the motorcycle with two pillion riders in rash and negligent manner and had dashed the Tata Safari vehicle causing the accident. The Insurance Company denied income, factum of death and injury, accident as well as alleged rash and negligent act on the part of driver of Tata Safari vehicle. Breach of terms and conditions of insurance policy was also averred with a contention that driver of Tata Safari vehicle was not holding valid and

effective driving license at the time of the accident in question.

(c) On the basis of rival pleadings, issues were framed and the parties went for trial. In M.A.C.P. No. 518/2009, in order to prove their claim for compensation on account of death of Savta, claimants examined claimant no.1 Mangal - widow of the deceased and had also adduced evidence of Arjun Tulshiram Panmode - employee of Saikripa Co-operative Sugar Factory, Deodaithan [Taluka : Shrigonda], in order to prove agricultural income of deceased Savta. In rebuttal, respondents did not adduce any evidence.

(d) In order to prove her claim for compensation in M.A.C.P. No. 514/2009, injured Mangal examined herself and also adduced evidence of Dr. Rahul Patil at Exhibit 26 for proving permanent disability.

5. After hearing the parties, by the impugned judgments and awards dated 2-7-2013, the learned Member of the Tribunal awarded compensation of Rs. 5,85,000/- to claimants in M.A.C.P. No. 518/2009 by holding that deceased Savta had contributed in happening of the accident and his blameworthiness was estimated at 25 %. In M.A.C.P. No. 514/2009, the learned Member of the Tribunal awarded compensation of Rs. 4,74,000/- to injured claimant Mangal on account of damages suffered by her in the accident.

6. Shri Jayabhar, the learned Counsel appearing for appellants, argued that the learned Tribunal has committed error in assessing age of deceased Savta as 40 years and consequently multiplier of 15 was wrongly

adopted for determining loss of dependency. According to the learned Counsel, oral evidence of claimant Mangal shows that deceased Savta was 30 years of age at the time of accident in question and therefore multiplier of 17 should have been adopted relying on the decision of the Hon'ble Apex Court in the case of **Sarla Verma & others Vs. Delhi Transport Corporation & another**, reported in 2009(5) **Mh.L.J.** 775. Shri Jayabhar, the learned Counsel further argued that claimants have proved that deceased Savta was earning annual income of Rs. 2,50,000/- by professing agriculture and doing dairy business. He was holding 10 Acres of irrigated land. Therefore, in submission of the learned Counsel, finding of the learned Tribunal that the deceased was earning Rs. 50,000/- per annum is totally perverse. Shri Jayabhar, the learned Counsel for appellants further argued that meagre amount was granted towards medical expenses. According to him, finding of the learned Tribunal that the accident happened because of contributory negligence of the deceased is erroneous being not supported by evidence on record. So far as injury claim is concerned, Shri Jayabhar, the learned Counsel argued that claimant Mangal had suffered 100 % permanent disability and as such, the learned Tribunal by considering her age as 30 years, ought to have applied proper multiplier and granted 100 % compensation to her by estimating 100 % loss of her future income. He further argued that medical expenses were improperly granted ignoring the evidence that claimant Mangal had suffered fracture injuries and was operated at least on five occasions. With these submission, according to him, the claim petitions ought to have been allowed by the learned Tribunal.

7. As against this, Shri Deshpande, the learned Counsel

appearing for respondent no.2 - Insurance Company and Shri Ostwal, the learned Counsel appearing for respondent no.1 - owner of Tata Safari vehicle, supported the impugned judgments and awards by contending that the learned Tribunal had discharged its statutory duty of awarding just and reasonable compensation in both these claim petitions. Assessment of age, income as well as multiplier was perfectly in tune with settled law and as such, impugned judgments and awards need no interference.

8. Having heard the learned Counsel appearing for the parties and on careful scrutiny of evidence on record, let us now examine whether the learned Tribunal as awarded just and reasonable compensation to claimants who are victims of the vehicular accident which took place 31-5-2009. At the outset, let us examine whether the learned Tribunal erred in concluding that deceased Savta had contributed in happening of the accident and whether contribution on his part pegged at 25 % by the learned Tribunal is correct. Contention of claimants on this aspect is that Tata Safari came from Shrigonda side and while proceeding towards Karjat i.e. from west to east, all of a sudden left turn was taken by it and then immediately the driver took U-turn to proceed in correct direction. Evidence of claimant Mangal in both these claim petitions is perfectly in tune with pleadings of the claimant. Evidence of claimant Mangal as well as situation reflected from the spot Panchanama Exhibit 35 shows that the vehicular accident took place at north-east side of Hirgaon Square. Being square, four roads were meeting at that point. Undisputedly deceased Savta was riding the motorcycle with two pillion riders including claimant Mangal. In other words, three adult persons were travelling on the motorcycle. The motorcycle was proceeding through the square where the

accident in question happened.

9. It is basic principle that for claiming compensation, there should not be any negligence on the part of the claimant. There should not be any improper conduct and the acts giving rise to claim for compensation must be lawful, just and reasonable. In the case in hand, deceased Savta was taking two adult persons as pillion rider on his motorcycle and was passing through the square. As such, as a prudent man riding the motorcycle, it was incumbent on his part to proceed slowly by taking all necessary care and precaution. He was expected to be more vigilant when Tata Safari vehicle was coming from the side of Shrigonda and was proceeding towards Karjat through that square. However, the mode and manner in which the accident happened as reflected from version of claimant Mangal and contemporaneous spot Panchanama, it becomes clear that deceased Savta had not taken care expected from a person of ordinary prudence while riding the motorcycle, leave apart his overt act of carrying two pillion riders with him. In the light of these aspects, no fault can be found with the finding of the learned Tribunal that the accident happened because of contributory negligence of deceased Savta while riding the motorcycle. Considering the fact that he was driving the motorcycle and the accident was due to collusion of the motorcycle and the Tata Safari vehicle, the learned Tribunal rightly assessed blameworthiness of Savta at 25 % and that of driver of Tata Safari vehicle at 75 %. As such, finding on this count needs no interference.

10. Now, let us examine the aspect of compensation payable to

claimants in both these claims. Whenever any amount is to be determined as compensation payable for any injury or casualty suffered during the accident, the object is to compensate so far as monetary loss suffered by the claimant is concerned, because it is impossible to equate money with human suffering and personal deprivation. Provisions of the Motor Vehicles Act, 1988, enjoins the Tribunal to award compensation and the term 'compensation' signifies that which is given to recompense - an equivalent rendered. Therefore, it is clear that compensation is return for loss or damage suffered. Consequently, it needs to be equal in value although not alike in kind. In this view of the matter, a duty is cast on the Tribunal to see that the award must be just and reasonable. The Tribunal is not bound by the claim made by the claimants but it has to see that victims of the vehicular accident are adequately compensated. On this aspect, valuable guidance can be had from judgment of the Hon'ble Apex Court in the case of ***Rajesh and others Vs. Rajbir Singh and others***, reported in **2013 ACJ 1403**. In the light of these principles for assessment of compensation, let us examine what should be the just and reasonable compensation to which claimants are entitled on account of death of Savta and for damage or loss suffered by claimant Mangal because of injuries suffered by her in the accident.

11. Evidence of claimant Mangal shows that the accident took place on 31-5-2009 and injured Savta was then admitted to Ruby Hospital at Pune after necessary first aid. He succumbed to injuries at Ruby Hospital at Pune on 6-6-2009. Though claimants in that claim pleaded that deceased Savta was earning Rs. 2,50,000/- per annum from agriculture as well as dairy business, there is no evidence worth

mentioning to substantiate this claim. Perusal of record and proceedings does not support contention of Shri Jayabhar, the learned Counsel for the appellant, that deceased Savta was holding 10 Acres of irrigated land. On the contrary, revenue record placed on record shows that deceased was owner of 81 Are land i.e. about 2 Acres and 1 Guntha. Evidence of Arjun Panmode - employee of the Sugar Factory shows that deceased Savta used to sell sugarcane to the Sugar Factory. Evidence of Arjun Panmode shows that deceased Savta earned annual income ranging from Rs. 23,897/- to Rs. 18,897/- per month for these three years. Claimant Mangal admitted in her cross examination, that about 60 % of the agricultural income comprises of expenditure incurred for cultivation. Claimants could have placed necessary evidence regarding dairy business of deceased Savta in the form of sale of milk to the society. Evidence of Mangal is bereft of material data necessary for estimation of income from dairy business of deceased Savta. In the wake of this vague and discrepant evidence regarding income of deceased Savta, by doing guess work, the learned Tribunal estimated his annual income at Rs. 50,000/-. The course adopted by the learned Tribunal is perfectly justified and correct.

12. For determining just compensation in death claim, three factors are always relevant. Those are : age of the deceased, income of the deceased and lastly, number dependents on the deceased. In the case in hand, claimants have come up with the case that deceased Savta was 30 years of age at the time of his accidental death. Claim petition bearing No. 518/2009 shows 12 years, 11 years and 10 years as ages of his children. No documentary proof in respect of age of deceased Savta is forthcoming nor it is the case of claimants that his birth was not reported to the

statutory authority or that he had not taken any school education. Still such material evidence is not forthcoming. As such, instead of relying her statement in chief examination, the Tribunal considered the material elicited from cross examination of Mangal - widow to the effect that she married deceased Savta prior to 18 to 19 years and that deceased Savta was elder to her by 5 years. Statement of claimant Mangal was recorded by the Tribunal in December 2011. Considering this evidence, the learned Tribunal estimated age of deceased Savta as 40 years and this finding is perfectly in consonance with the evidence on record. The same does not require any interference.

13. By now, it is well settled that multiplier method needs to be adopted for estimation of loss on account of dependency. Perusal of the impugned award in M.A.C.P. No. 518/2009 reflect glaring error committed by the learned Tribunal in not assessing and awarding compensation on account of loss of future prospects of advancement in life of deceased Savta. At this juncture, it is apposite to quote observations of the Hon'ble Apex Court in the case of **Rajesh and others (supra)** where this aspect was clarified after considering the judgment in the case of **Santosh Devi Vs. National Insurance Co. Ltd. [2012 ACJ 1428 (SC)]**. Paras 11 and 12 in the case of **Rajesh and others (supra)** reads thus :-

"11. Since the court in *Santosh Devi's* case, 2012 ACJ 1428 (SC), actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma's* case, 2009 ACJ 1298 (SC) and to make it applicable also to self-

employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30 per cent always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50 per cent to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30 per cent in case the deceased was in the age group of 40 to 50 years.

12. In *Sarla Verma's* case, 2009 ACJ 1298 (SC), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15 per cent in the case where the victim is between the age group of 50 and 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter. "

It becomes thus clear that even in case of self-employed or person with fixed wages, in case of deceased victim having age of 40 years or less, there must be an addition of 50 % to his annual income in order to compensate the dependents for loss of future prospects.

14. Considering the loss of future prospects in life of deceased Savta, by adding 50 % to his estimated annual income, income of deceased Savta can be pegged at Rs. 75,000/-. As held by the Hon'ble Apex Court in the case of **Sarla Verma & others**, the multiplier which needs to be adopted is 15. As deceased Savta was survived by dependents, the parties are not at dispute to the fact that $\frac{1}{4}$ th amount from annual income of deceased Savta needs to be deducted towards his living and personal expenses. Thus, by deducting Rs. 18,750/- on this count, loss of dependency of claimants is estimated at Rs. 56,250/- per annum and by capitalizing it by applying multiplier of 15, total loss of dependency comes to Rs. 8,43,750/-. Claimants in M.A.C.P. No. 518/2009 are found to be entitled for this amount towards loss of dependency.

15. Now let us examine what is the other pecuniary loss suffered by the claimants on account of death of Savta. After the accident, he was admitted at Ruby Hospital at Pune where he succumbed to fatal injuries. As such, on account of conveyance as well as expenses of attendance, an amount of Rs. 10,000/- needs to be awarded to claimants and are so awarded.

16. Considering the documentary evidence on record, the learned

Tribunal had rightly awarded Rs. 1,87,942/- to claimants towards medical expenses incurred on treatment of deceased Savta.

17. The learned Tribunal by the impugned award, awarded Rs. 10,000/- each under head 'loss of consortium', 'loss of love and affection' and lastly on account of 'loss of estate'. Claimant no.1 Mangal in M.A.C.P. No. 518/2009 is widow whereas claimants nos.2 to 4 are children of deceased Savta. His parents are also claimants. In this backdrop, award of Rs. 10,000/- each under the heads 'loss of consortium' and 'loss of love and affection' cannot be upheld. In the case of **Rajesh and others (supra)**, the Hon'ble Apex Court has examined this aspect in view of changed socio-economic views. It is held therein that consortium is right of spouse to company, care, help, comfort, etc. with her mate and this constitutes a major head for award of compensation and therefore major compensation should be awarded under this head. Similar is the case of 'loss of love and affection'. Hence, in view of law laid down by the Hon'ble Apex Court, I award Rs. 1,00,000/- on account of loss of consortium and Rs. 1,00,000/- on account of loss of love and affection to claimants. Award of Rs. 10,000/- towards loss of estate is upheld. Resultantly, claimants in M.A.C.P. No. 518/2009 i.e. death claim are found to be entitled for total compensation of Rs. 12,51,692/-. However, from this amount of compensation, 25 % needs to be deducted on account of contribution of deceased Savta in causing the accident. Therefore, after deducting Rs. 3,12,925/-, towards 25 % contribution of the deceased in causing the accident, claimants in this petition bearing No. 518/2009 are found to be entitled to recover an amount of Rs. 9,38,775/- from respondents towards accidental death of Savta.

18. After assessing the compensation on account of death of Savta, now let us examine what should be compensation payable to his widow Mangal on account of damage and loss suffered by her in the vehicular accident. In M.A.C.P. No. 514/2009 filed by her, Insurance Company came up with a stand that the petition suffers from non-joinder of essential party as the accident happened because of rash and negligent driving of motorcycle by husband of injured claimant. True it is, that evidence on record shows that accident happened because of composite negligence of deceased Savta and driver of the Tata Safari vehicle, but this aspect shall have no bearing on the claim made by injured Mangal vide M.A.C.P. No. 14/2009. So far as her case is concerned, she suffered injuries because of composite negligence of drivers of both the vehicles. This aspect is elaborately explained by the Hon'ble Apex Court in the case of ***T.O. Anthony Vs. Karvarnan & others***, reported in (2008) 3 SCC 748. Para 6 of that judgment needs re-production and reads thus :-

" "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them.

In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence. "

As such, claimant Mangal exercised her choice to claim compensation from one of the joint tortfeasor and therefore it cannot be said that her petition is bad for non-joinder of essential parties.

19. Great care is required to assess compensation in respect of injury claim because pains and suffering as well as disabilities suffered by surviving victim of the vehicular accident continues life long. Money cannot bring back broken frame of such victims. Evidence of injured Mangal shows that she suffered multiple fracture injuries because of this

accident and was admitted as indoor patient at Yogeshwari Accident Hospital at Daund of Dr. Rahul Patil, for the period from 1-6-2009 to 3-7-2009. Nature of injuries and consequent disability suffered by the injured claimant plays a major role in determining compensation. As such, let us note what were the injuries suffered by claimant Mangal in this accident. It is evident from evidence of Dr. Rahul Patil, that claimant Mangal suffered close fracture of shaft right femur. She has also suffered close fracture D/3rd shaft left femur with Grade III compound fracture, upper end right tibia with multiple fractures to right foot. Claimant Mangal was treated by Dr. Rahul Patil and his evidence shows that three major surgeries were conducted on her. After discharge, she was advised to visit for follow up treatment for six months. Evidence of Dr. Patil corroborated by disability certificate at Exhibit 29 shows that claimant Mangal suffered total disability of 65 %. Her movement of right knee is restricted by 9 %; strength of her left knee is reduced to 27.6 %; movement of her left knee is also restricted and her right leg is shortened.

20. On the backdrop of this medical evidence, evidence of claimant Mangal shows that she is totally disabled and is unable to stand on her feet. She deposed that her age was 28 years at the time of the accident in question.

21. Now, let us examine whether claimant Mangal has suffered 100 % loss of future income and whether she is unable to follow all her natural and normal pursuits apart from her occupation. Though claimant Mangal had claimed that she was earning more than Rs. 4,00,000/- per annum, this appears to be her fanciful claim. There is no evidence in

support of this claim. Perusal of record and proceedings in another claim petition shows that claimant Mangal is owner of only 20 Are agricultural land. As such, the learned Tribunal has rightly assessed her income at Rs. 3,000/- per month. This finding is totally in consonance with the judgment of the Hon'ble Apex Court in the case of **Arun Kumar Agrawal & another Vs. National Insurance Company Limited & others**, reported in (2010) 9 SCC 218. Considering the evidence on record and particularly admission of claimant Mangal, that she married Savta prior to 18 to 19 years and considering age of deceased Savta as 40 years, the learned Tribunal assessed age of injured Mangal as 35 years. No fault can be found in respect of this finding. Even if her age is reduced by 3 or 4 years, that will have no bearing on compensation even if multiplier method is adopted for assessing loss of her future income. The multiplier will still remain the same.

22. Evidence of Dr. Rahul Patil makes it clear that injured Mangal had suffered permanent disability. Though she has come up with version that she will not be in a position to do any work in future, evidence of Dr. Rahul Patil shows that she will be in a position to do some work with change in her lifestyle. Thus effect of permanent disability caused to injured Mangal will not render her functionally disabled forever. The learned Tribunal assessed loss of her earning capacity at 40 %. This appears to be somewhat on lower side because claimant Mangal had suffered fracture injuries to her legs and had incurred permanent disability of 65 %. As such, considering her occupation and nature of work as housewife, it needs to be held that claimant Mangal had suffered 50 % loss of earning capacity. Therefore, her loss of future earning is estimated at

Rs. 2,75,000/- and this amount is awarded to her (Rs. 18,000 X 15). The learned Tribunal had awarded meagre amount of Rs. 20,000/- towards loss of amenities of life to claimant Mangal. Considering the nature of injury and percentage of disability suffered by her, she is awarded an amount of Rs. 1,00,000/- towards permanent disability and loss of amenities of life. Awarded amount of Rs. 20,000/- under the head 'pains and suffering' is increased to Rs. 50,000/- considering the fact that injured claimant had suffered severe fracture injuries requiring at least five operations. Award of Rs. 1,98,000/- towards medical expenses incurred by claimant Mangal and Rs. 20,000/- towards expenses on diet, attendance and conveyance are maintained. In the result, claimant Mangal in M.A.C.P. No. 514/2009 is found to be entitled for total compensation of Rs. 6,38,000/- and the same is awarded to her.

23. Needless to mention that liability to pay compensation to claimants in both these cases is of respondents and they should bear this liability jointly and severally. Impugned orders regarding disbursement of compensation and its apportionment in death claim are correct and needs no interference and as such, the following order :-

ORDER

(A) First Appeal No. 600 of 2014 is partly allowed with proportionate costs. Impugned judgment and award of the learned Member of the Motor Accident Claims Tribunal, Ahmednagar, is accordingly modified. Respondent nos.1 and 2 do jointly as well as severally pay compensation of Rs. 9,38,775/-, inclusive of no fault liability to claimants, with interest at the

rate of 7.5 % per annum from the date of petition till realization of the entire amount to appellants / original claimants. The amount of compensation, if any, paid earlier be adjusted as on the date of payment. The amount payable to appellants / claimants under this judgment and order be disbursed and apportioned amongst appellants as per the mode, manner and ratio fixed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar, by the impugned judgment and order.

(B) First Appeal No. 602 of 2014 is partly allowed with proportionate costs. Impugned judgment and award of the learned Member of the Motor Accident Claims Tribunal, Ahmednagar, is accordingly modified. Respondent nos.1 and 2 do jointly and severally pay compensation of Rs. 6,38,000/-, inclusive of no fault liability amount, to appellant / claimant Mangal, with interest at the rate of 7.5 % per annum from the date of petition till realization of the entire amount. The amount of compensation, if any, paid already be adjusted as on the date of payment.

24. Both Appeals stand disposed of accordingly.

(A.M. BADAR)
JUDGE

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