

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

FIRST APPEAL NO. 170 OF 2003

- 1) Smt. Ranubai W/o Narsingrao Patil
Age 41 years, Occupation nil,
- 2) Sudarshan S/o Narsingrao Patil
Age 18 years, Occupation Education,
- 3) Vijay S/o Narsingrao Patil
Age 17 years, Occupation Education,
Through his mother-natural guardian
i.e. Appellant No.1.
- 4) Amol s/o Narsingrao Patil
Age 13 years, Occupation Education,
Through his mother-natural guardian
i.e. Appellant No.1

All r/o Killari, Taluka AUSA,
District Latur.

... Appellants

Versus

- 1) Chandrakant S/o Kishanrao Jagtap
Age 43 years, Occupation Agriculture,
R/o Kumtha, Taluka AUSA,
District Latur.
- 2) Dilipkumar Kishanrao Jadhav
Age 42 years, Occupation Agriculture,
R/o Kumtha, Taluka AUSA,
District Latur.
- 3) The New India Assurance Co. Ltd.
Through its Branch Manager,
Branch Office Chandranagar,
Latur.

... Respondents

.....
Advocate for the appellants : Mr. B. R. Kedar
Advocate for respondent No.3-insurer : Mr. S. G. Chapalgaonkar
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CORAM : V. K. JADHAV, J.

DATED : 18th MARCH, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by learned Member of Motor Accident Claims Tribunal, Latur dated 17th July, 2002 in Motor Accident Claims Petition No. 258 of 1999, the appellants-original claimants have preferred this appeal to the extent of quantum of compensation.

2. Brief facts giving rise to the present appeal are as follows :

On 18.01.1999, deceased Narsing Patil was returning to village Killari by Motorcycle from AUSA Court. He was pillion rider on the said motor cycle. On the way, the rider-respondent No.2 could not control the vehicle and resultantly, accident had taken place, in consequence of which, deceased Narsing sustained head injury and he died on the way to Rural Hospital, Killari. The appellants-original claimants filed MACP No. 258 of 1999 for grant of compensation under various heads. Learned Member of MACT, Latur, by impugned judgment and award dated 17th July, 2002, partly allowed the claim petition and thereby directed respondent Nos. 1 to 3 to pay amount of Rs. 4,32,000/- with proportionate costs of the petition with interest at the rate of 9% per annum. Being aggrieved by the same, the

original claimants have preferred this appeal to the extent of the quantum of compensation on the ground that the tribunal has not correctly taken into consideration the salary drawn by deceased at the time of his death and the tribunal has not awarded compensation under non-pecuniary heads. The award is also challenged on the ground that the tribunal has applied incorrect multiplier in this case. Hence this appeal.

3. Learned counsel for the appellants submits that deceased Narsing was serving as Police Head Constable at Killari Police Station on monthly salary of Rs. 6564/-. Learned counsel submits that the tribunal has considered only the net salary of deceased, and accordingly, calculated the compensation. Learned counsel submits that the deceased Narsing was 42 years old at the time of his death. However, the tribunal has erroneously applied the multiplier as 10 instead of 14. Learned counsel further submits that the tribunal has not awarded compensation for the non-pecuniary loss such as 'Loss of Consortium', 'Loss of love and Affection' and also 'Funeral Expenses'

4. Learned counsel for the appellants submits that even the tribunal has committed error while deducting $\frac{1}{3}$ rd amount of total earning of deceased on the count of his personal expenses. Learned counsel submits that the tribunal should have deducted $\frac{1}{4}$ th amount

from his total earning as personal expenses because there are three minor claimants and one widow dependent upon his earning at the time of his death.

5. Learned counsel for the respondent-insurer submits that the tribunal has correctly assessed the compensation and no interference is called for. Learned counsel submits that the appeal is thus, liable to be dismissed with costs. Learned counsel submits that, as per the award passed by the tribunal, the respondent-insurer has deposited the entire amount along with interest before the tribunal.

6. The following points arise for my determination and I have recorded my findings to those points for the reasons given below :

	POINTS	FINDINGS
1.	Whether the tribunal has correctly assessed the compensation?	In the negative.
2.	Whether the impugned judgment and award calls for interference?	In the affirmative.
3.	What order ?	As per final order.

REASONS

7. It is not disputed that deceased Narsing has died as a result of accident while riding on motorcycle bearing registration No. MH-24-2185 and the said accident occurred because of rash and negligent driving of respondent No.2.

8. So far as the occupation of deceased Narsing is concerned, the same is also not disputed. Deceased Narsing was serving as Police Head Constable at the time of his death and he was getting salary of Rs.6564/- per month. As per the evidence adduced before the trial court, deceased Narsing had drawn last monthly salary of Rs.6564/-. The salary certificate is produced on record and the same is proved and marked Exh.38. On careful perusal of the same, it appears the deduction on the count of Professional Tax amounting to Rs.60 cannot be considered, however, the remaining salary to the tune of Rs.6500/- is required to be considered for assessing compensation in the present case. Learned Member of the MACT has committed grave error while considering net salary of deceased Narsing.

9. Learned Member of the tribunal has also committed error in considering the multiplier 10 instead of 14.

10. So far as the award of compensation under the non-pecuniary loss is concerned, it appears that the tribunal has not awarded any compensation under the heads of 'Loss of Estate', 'Loss of Love and Affection' and 'Funeral Expenses'. In view of this, the claimants are entitled for an amount of Rs.10,000/- for Loss of Estate, Rs.15,000/- for Loss of Consortium, Rs.10,000/- each, for the minor claimants under the head 'Loss of Love and Affection' and Rs.10,000/- for Funeral Expenses.

11. The tribunal has also committed mistake while deducting $\frac{1}{3}$ rd amount on the count of personal expenses instead of deduction of $\frac{1}{4}$ th amount. If the gross salary is considered as Rs.6,500/-, that corresponds to Rs.78,000/- per annum and if $\frac{1}{4}$ th deduction on the count of personal expenses is considered, then 'Loss of Dependency' comes to Rs.58,500/-. On application of multiplier of 14, the total amount of compensation under the head of 'Loss of Dependency/Income' comes to Rs.8,19,000/-. In addition to this, the claimants are also entitled for an amount, as discussed above, under the heads of non-pecuniary losses.

12. In view of the above discussion, the breakup of compensation can be broadly categorized as under :

1.	Loss of Dependency/Income	Rs.8,19,000/-
2.	Loss of Estate	Rs.10,000/-
3.	Loss of Consortium	Rs.15,000/-
4.	Loss of Love and Affection (Rs.10,000/- each for minor claimant Nos. 2 to 4)	Rs.30,000/-
5.	Funeral Expenses	Rs.10,000/-
TOTAL		Rs.8,84,000/-

13. Thus, the appellants/claimants are entitled for total compensation of Rs.8,84,000/- (Rupees Eight Lacs Eight Four Thousand only). I accordingly answer the Point No.1 in the negative and Point No. 2 in the affirmative. In the result, I proceed to pass the following order.

O R D E R

- I. The First Appeal is hereby partly allowed with proportionate costs.
- II. The impugned order dated 17th July, 2002 passed by learned Member of Motor Accident Claims Tribunal, Latur in MACP No.258 of 1999 is modified in the following way;

Respondent Nos. 1 to 3 jointly and severally do pay an amount of Rs.8,84,000/- with proportionate costs of petition

with interest at the rate of 9% per annum from the date of petition till realization of the entire amount.

III. Rest of the judgment and order passed by the tribunal stands confirmed.

IV. Award be drawn up accordingly.

V. The amount already deposited by the respondent-insurer before the tribunal shall be deducted from the compensation as per the modified award passed by this Court.

VI. First Appeal is disposed of in the above terms.

(V. K. JADHAV, J.)

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