

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

FIRST APPEAL NO. 1413 OF 2004

1. Venkatrao s/o Limbaji Kamble,
Age 51 years, Occ : Nil,
R/o Hadoli, Taluka Chakur,
District Latur.
 2. Hawsabai w/o Venkatrao Kamble,
Age 46 years, Occ : Household,
R/o Hadoli, Taluka Chakur,
District Latur.
- ... Appellants

Versus

1. Tukaram s/o Ambaji Ghule,
Age 55 years,
Occ : Owner of the vehicle,
R/o. Hingangaon, Taluka Ahmedpur,
District Latur.
 2. Sambhaji s/o Shankar Bade,
Age 36 years, Occ : Driver,
R/o Hadoli, Taluka Chakur,
District Latur.
 3. The National Insurance Company Ltd.,
Through its Branch Manager,
Hanuman Chawk,
Latur.
- ... Respondents

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Advocate for Appellants : Mr. S. S. Shinde
Advocate for Respondent No.2 : Mr. V. D. Gunale
Advocate for Respondent No.3 : Mr. P. P. Bafna
Respondent No. 1 served.
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CORAM : V. K. JADHAV, J.

DATED : 29th MARCH, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by learned Member, MACT, Latur, dated 31.03.2004 in MACP No. 490 of 2002, the original claimants have preferred this appeal.

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

On 02.10.2002, deceased Sanjay was on way to his native place from Kingaon in a jeep bearing registration No. MH-24-C-1524. Respondent No.2 was driving the said jeep in rash and negligent manner and on the way, he suddenly applied breaks of the jeep, in consequence of which, deceased Sanjay fell down on the road from the jeep. He had sustained several injuries and succumbed to the same in hospital. The claimants, who are the parents of deceased Sajnay, preferred MACP No. 490 of 2002 before learned Member, MACT, Latur. Original respondent Nos. 1 and 2 i.e. the owner and the driver of the vehicle involved in the accident, though duly served, had not contested the claim petition. Respondent No.3-insurer strongly resisted the claim by filing written statement at Exh.23. Learned Member of the tribunal, by impugned judgment and award dated 31.03.2004, partly allowed the claim petition with proportionate costs and thereby directed the respondents to pay, jointly and

severally, total amount of compensation of Rs.2,17,000/-, inclusive of “No Fault Liability”, with interest at the rate of 9% per annum on the unpaid amount of compensation of Rs.1,67,000/-. Being aggrieved by the same, the claimants have preferred this First Appeal to the extent of quantum of compensation.

3. Learned counsel for the appellants-original claimants submits that learned Member of the tribunal has not considered the income of deceased Sanjay from his milk business. Learned counsel submits that even though deceased Sanjay was getting Rs.50/- per day from his milk business and also getting wages for doing labour work, learned Member of the tribunal erroneously considered the income of deceased Sanjay as per the normal wages for a labour. Learned counsel submits that the tribunal has committed mistake in applying multiplier by considering the age of claimants-parents. Learned counsel submits that the tribunal ought to have considered multiplier 18 by taking into account the age of deceased Sanjay at the time of his accidental death. Learned counsel submits that the tribunal has awarded meager amount under the heads of non-pecuniary loss. Learned counsel submits that even the tribunal has not awarded any compensation on account of “loss of estate”.

4. Learned counsel for respondent No.3-insurer submits that

there is no pleading to the effect that deceased Sanjay was getting Rs.50/- per day from his milk business. Learned counsel submits that in absence of any pleading to that effect, the evidence, if any, adduced by the claimants in this regard, cannot be considered. Learned counsel submits that claimant No.1 has deposed in his examination-in-chief itself, that deceased Sanjay was earning Rs.60/- per day as wages for doing labour work. Learned counsel submits that the tribunal has therefore, rightly considered the income of deceased Sanjay as Rs.60/- per day, corresponding to Rs.1,800/- per month. Learned counsel submits that the tribunal has further committed mistake by deducting 1/3rd amount instead of 1/2 towards personal expenses as deceased Sanjay was unmarried. Learned counsel submits that considering the age of parents, the tribunal has rightly applied multiplier 14. Learned counsel submits that the tribunal has considered non-pecuniary loss and accordingly awarded just and reasonable compensation. Learned counsel submits that no interference is called for and the appeal is thus, liable to be dismissed.

5. I have also heard learned counsel for respondent No. 2.

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

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

REASONS

7. So far as income of deceased Sanjay from his milk business is concerned, there is no pleading to that effect. Moreover, there is no material on record to establish that deceased Sanjay was carrying out business of selling milk. Claimant No.1-Venkatrao has deposed that deceased Sanjay was doing labour work and getting Rs.60/- per day. I do not find any fault in the finding recorded by the tribunal that deceased Sanjay was earning Rs.60/- per day, corresponding to Rs.1,800/- per month.

8. So far as 1/3rd deduction on account personal expenses of deceased Sanjay is concerned, it is well settled that the deduction of 50% towards personal expenses in case of unmarried son is proper. In the case in hand, the tribunal has committed mistake in deducting 1/3rd amount from the income as personal expenses.

9. So far as the selection of multiplier is concerned, it appears

that the tribunal has committed mistake in applying multiplier 14 instead of 18. Claimant No.1-Venkatrao has deposed that deceased Sanjay was 20 years old at the time of his accidental death. As per the postmortem notes, age of deceased Sanjay is 22 years. The claimants have not produced any documents on record to show the age of deceased Sanjay. Even considering the age of deceased Sanjay as 22 years at the time of his accidental death, the appropriate multiplier would be 18 instead of 14 as selected by learned Member of the tribunal. Learned Member of the tribunal has not awarded any compensation for "loss of estate". Claimant No. 1 was 50 years of age when claim petition was filed before the tribunal. Deceased Sanjay was the eldest son. Claimants have three more sons and one daughter, who are presently taking education. In these circumstances, the tribunal should have considered "loss of estate" on some higher level. On the other hand, the tribunal has not awarded anything under this head. Considering the facts and circumstances appearing in this case, I deem it appropriate to award Rs.25,000/- towards "loss of estate". The tribunal has awarded total amount of Rs.15,000/- as "loss of love and affection" and "funeral expenses". The tribunal should have awarded separate compensation for "loss of love and affection" and for "funeral expenses". In my opinion, the "loss of love and affection" in the present case should be Rs.15,000/- each for both the claimants and

Rs.10,000/- as "funeral expenses".

10. Thus, the break up of compensation can be broadly categorized as under:

1.	Loss of dependency/income (1800-1/2 towards personal expenses=900X12X18)	Rs.1,94,400/-
2.	Loss of estate	Rs.25,000/-
3.	Loss of love and affection (Rs.15,000/- each for both the claimants)	Rs.30,000/-
4.	Funeral expenses	Rs.10,000/-

TOTAL		Rs.2,59,400/-

Thus, the appellants-claimants are entitled for total compensation of Rs.2,59,400/-. I answer point Nos. 1 and 2 accordingly and proceed to pass the following order:

O R D E R

- I. The First Appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 31.03.2004 passed by learned Member, MACT, Latur in MACP No.490 of 2002 is hereby modified in the following manner:

Opponent Nos. 1 to 3, jointly and severally, shall pay total amount of compensation of Rs.2,59,400/-, inclusive of

interim amount of compensation, along with interest at the rate of 9% per annum from the date of filing claim petition till realization of entire amount.

- III. Rest of the judgment and award passed by learned Member, MACT, Latur in MACP No. 490 of 2002 stands confirmed.
- IV. Award be drawn up accordingly.
- V. The First Appeal stands disposed of.

(V. K. JADHAV, J.)

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