

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

FIRST APPEAL NO. 13 OF 2005

1. Smt. Meerabai W/o Laxman Sakhare,
Age-32 yrs, Occ. H.H.,
 2. Aditya s/o Laxman Sakhare,
Minor,
 3. Abhijeet s/o Laxman Sakhare,
Minor,
- Appellants Nos. 2 & 3 are minors &
They are under guardian of their
Natural mother i.e. appellant No. 1
4. Bhagwan s/o Narayan Sakhare,
Age-61 yrs, Occ. Agril
 5. Sow. Krishnabai w/o Bhagwan Sakhare,
age-56 yrs, Occ. H.H.
All R/o Sumthana, Tq. Renapur,
Dist. Latur.

... APPELLANTS
(Ori. Claimants)

VERSUS

1. Sayed Yusuf s/o Sayed Sab,
Age- Major, Occu. Business,
R/o. Panchvati Nagar, MIDC Area,
Latur.
2. United India Insurance Co. Ltd.
Through its Branch Manager,
in front of Gorakshan Tilak Nagar,
Latur.

...RESPONDENTS
(Ori. Respondents)

...

Mr. R.B. Deshmukh, Advocate for appellants
Respondent No. 1 served
Mr. D.V. Soman, Advocate for respondent No. 2

**CORAM : A.M. DHAVAL, J.
DATED : 9th AUGUST, 2018.**

ORAL JUDGMENT :-

1. Being aggrieved and dissatisfied with Judgment and
Award dated 20-09-2004, passed by the Chairman, Motor

Accident Claims Tribunal, Latur (in short, "Tribunal") in Motor Accident Claim Petition No. 70 of 2000 thereby awarding compensation of Rs.3,11,000/- inclusive of '*No-Fault-Liability*' with interest @ 9% p.a., the appellants-original claimants have preferred this appeal for enhancement.

2. Heard learned Advocate Mr. R. B. Deshmukh, for the appellants and Mr. D. V. Soman, learned Advocate for respondent No. 2.

3. As per record, on 15-10-1998 at about 4.05 p.m. near the village Kale-Borgaon, Laxman proceeding along Barshi road met with an accident due to rash and negligent driving of truck bearing No. MH-10-2055 belonging to respondent No. 1 and insured with respondent No.2. The claimants claimed that the deceased was aged 30 years practicing *Electropathy* and also supervising the agricultural field. He was earning Rs. 10,000/- to Rs.12,000/- per month from the medical practice. He also used to look after the agricultural lands and was maintaining the family of five dependents. Therefore, the claimants claimed compensation of Rs.28,90,000/- as per details given in paragraph No. 4 of the claim petition.

4. Though, respondent No. 1 appeared, he did not file written statement.

5. Respondent No. 2 filed written statement and denied the

age, nature of accident, death of deceased Laxman due to rash and negligent driving of the truck driver. It was claimed that truck driver was not holding effective valid driving license. It is claimed that the deceased was rash and negligent while driving his motor bike. The expenses, as shown in the claim petition, were denied and it was claimed that the claim is excessive and exorbitant one. The insurance of the vehicle was not disputed, but breach of the policy was claimed. On the basis of pleadings the learned Tribunal framed the issues at Exhibit-11.

6. The claimants have no personal knowledge of the accident. The claimants examined P.W.1 Meerabai Sakhare, widow of deceased (C.W.-1) and one Mr. Rajgopal Sarda, who is Chartered Accountant (C.W.-2) on the point of income of the deceased and also relied on the various documents. The learned Tribunal held that there was 30% contributory negligence on the part of deceased. The learned Tribunal held that the deceased was 35 year old as shown in the Post Mortem Notes. His monthly income was assumed at Rs.3000/- from medical practice and annual income of Rs.20,000/- from agricultural. He applied multiplier '13' and awarded compensation Rs.3,11,000/- for loss of income inclusive of *No fault liability* and interest @ 9% p.a.

7. Mr. Deshmukh, learned Advocate for the appellants submits that there was no material to show any rashness and negligence on the part of deceased Laxman. The deductions towards

personal expenses was wrong in view of five dependents. The multiplier "13" was wrongly applied, it ought to have been "17". He, therefore, argued that the appeal deserves to be allowed and compensation should be enhanced.

8. Per contra, Mr. Soman, learned Advocate for respondent No.2 argued that learned Tribunal has relied on the spot panchnama and given valid reason for 30% contributory negligence on the part of deceased. The claimants have not examined any person in respect of rashness and negligence of deceased Laxman. Therefore, no proper and reliable evidence about the income of deceased @ Rs.50,000/-. Mr. Soman, learned counsel for respondent No. 2 has given opportunity to argue on the point of future prospects as are to be awarded for self employed persons in view of ratio laid down in the case of - ***National Insurance Company Limited Versus Pranay Sethi, [(2017) 16 SCC 680]***. He argued that except certificate of elctropathy, there is no documentary evidence to show that the deceased was earning Rs.30,000/- to Rs. 37,000/- per annum. The evidence of Chartered Accountant is not reliable. In view of admission given in the cross examination of witnesses, Mr.Soman argued that there was no damage to the truck and the truck cannot be said to be involved in the accident merely because it was halted on the spot. Considering all facts and compensation awarded is just reasonable and needs no interference.

9. The points for my determination and findings thereon are as follows :-

Nos.	Points		Findings
1	Whether the compensation awarded by the learned Tribunal is just and reasonable ?	..	In the negative.
2	What order ?	..	As per final order.

10. So far as rashness and negligence of truck driver is concerned, the claimants have no knowledge. None of them was present at the time of incident on the spot. The deceased had survived for few days and he has lodged the First Information Report , which is in the form of dying declaration. He has stated in the FIR that he was proceeding from left side of the road, that time the truck had given dash to him. He could not tell the number of the truck. The spot panchnama shows that the truck was halted by the side of the road. The police after carrying out investigation submitted the charge-sheet against driver of the truck. The respondents have not examined the driver of truck. Hence, adverse inference ought to be drawn that the truck driver was driving the vehicle in rash and negligent manner. The learned Tribunal ventured to infer some rashness and negligence on the basis of spot panchnama. After going through the spot panchnama, I do not find any material to show that bike rider was rash and negligent. The reasons given by the learned

Tribunal is based on conjectures and surmises. When driver is not examined, adverse inference is to be drawn against him. The spot panchnama does not show that bike rider was on wrong side or there was huge brake marks applied by him. The finding of contributory negligence cannot be based on conjectures and surmises on the basis of spot panchnama. In the circumstances, the finding of 30% negligence on the part of deceased is not sustainable.

11. The claimants claimed that deceased was 30 year old at the relevant time. The police papers including documents of P.M. notes show the age of deceased as 35 years. The learned Tribunal has also held that age of deceased was 35 years but he has applied wrong multiplier. For the age group of 31 to 35 years, applicable multiplier would be '16'. The claim for multiplier '17' is contrary to ratio in the case of **Smt. Sarla Verma Versus Delhi Transport Corporation, (AIR 2009 SC 3104).**

12. So far as the quantum of compensation is concerned, the claimants have filed certificate of the Electopathy Medico's of India issued to the deceased on 15-04-1993 and registration certificate of Electro Pathic System of Medicine. The evidence shows that the deceased was practicing in rural area and one can't expect documentary evidence about income. The claimants have examined Chartered Accountant (C.W.2). He has produced

memorandum of income and expenditure statement of account of deceased prepared by him for the period ending with 31-03-1995, 31-03-1996, 31-03-1997 and 31-03-1998 i.e. for the preceeding four years of the accident. Mr. Sarda (C.W.2) Chartered Accountant has issued certificate. It bears his seal and signature. The income of the deceased was not taxable, therefore, no question of production of Income Tax Returns had arisen. The income shown is equivalent to income of a daily labourer. The evidence of Chartered Accountant cannot be disbelieved on assumption that the claimants might have concocted these statements with the help of Mr. Sarda (C.W.2). Considering this evidence, I assume that the deceased was earning Rs. 36,000/- per annum during the relevant period.

13. There are some 7/12 extracts filed on record, but there is no specific evidence that the deceased was looking after the agricultural field and getting income from it. In absence of documentary evidence, loss of income assumed @ Rs. 20,000/- towards agricultural income is excessive and exorbitant, particularly, when there is no specific pleading also.

14. Considering the nature of work of the deceased, he could have attended the work of supervision only on the holidays. The loss of income from agricultural would be his supervisory skill quantified at Rs.500/- per month i.e. Rs.6000/- per annum. I,

therefore, hold that loss of annual income would be @ Rs.36,000/- from the medical practice and @ Rs.6000/- from agricultural land. As per Pranay Sethi's case (*supra*), the deceased was self employed and his income will have to be increased by 40%, loss of income from medical practice would be Rs.50,400/- plus agricultural income of Rs.6,000/-, it comes to Rs.56,400/-. Since there were five dependents, there would be one fourth ($\frac{1}{4}$) deductions towards personal expenses. Therefore, total loss of income would be Rs.42,300/- per annum. The multiplier applicable in present case would be '16' and loss of income will have to be assumed at Rs.6,76,800/-. Besides that, as per Pranay Sethi's case (*Supra*), the claimants are entitled for Rs. 40,000/- towards loss of consortium, Rs. 15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The deceased was admitted in the hospital after accident for a period of five days. But, there is no documentary evidence of medical and transportation expenses, though he was shifted to Government Hospital at Latur. Considering this fact, I award additional compensation of Rs.20,000/-. Thus, I hold that the claimants are entitled to Rs.7,66,800/-. Therefore, compensation calculated by the learned Tribunal @ Rs.3,11,000/- is very meagre and not inconsonance with settled principles of law. I, therefore, award compensation @ Rs.7,66,800/- along with interest @ 9% p.a. Hence, I answer point No.1 accordingly and

proceed to pass the following order :-

ORDER

- (1) The appeal is partly allowed with proportionate costs.
- (2) The impugned Judgment and Award dated 20th September, 2004 passed by the Chairman, Motor Accident Claims Tribunal, Latur, in MACP No. 70 of 2000 is set aside and modified as follows :-
 - (i) The respondents No.1 and 2 do jointly and severally pay compensation of Rs.7,66,800/- to the claimants, inclusive of *No-Fault Liability* amount and amount already paid pursuant to Award passed by learned Tribunal with interest @ 9 % per annum from the date of petition.
 - (ii) The amount paid earlier will have to be deducted from the dues payable and there shall be similar adjustment of interest payable.
 - (iii) The apportionment and investments shall be as follows:

Claimant's Name	Relation	Compensation Amount		Investment be made in any Nationalized Bank for a period
		Awarded	Investment	
Smt. Meerabai W/o Laxman Sakhare	Widow	3,00,000	2,00,000	One year
Aditya S/o Laxman Sakhare	Minor Son	1,50,000	1,00,000	One year
Abhijeet S/o Laxman Sakhare	Minor Son	1,50,000	1,00,00	One year
Bhagwan Narayan Sakhare	Father	66800	40000	Six months
Sow Krishnabai Bhagwan Sakhare	Mother	1,00,000	60000	Six months

with a right to receive intermittent interest.

- (iv) The deficit court fees, if any, be recovered from the appellants-original claimants prior to disbursement of the compensation amount in their favour.
- (v) An award amounting to decree be drawn up accordingly.

Sd/-

[A.M. DHAVALA]
JUDGE

MTK.