

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

FIRST APPEAL NO. 990 OF 2017

- 1] Latabai w/o Gyansingh Rathod,
age 36 years, occ. Housewife,
- 2] Atul s/o Gyansingh Rathod,
age 17 years, occ. Education,
u/g Appellant no.1,
- 3] Amit s/o Gyansingh Rathod,
age 15 years, occ. Education,
U/g. Appellant no.1,
- 4] Lalu s/o Raghu Rathod,
age 61 yrs., occ. Nil,
- 5] Sundarabai w/o Lalu Rathod,
age 56 years, occ. Nil,

All R/o Bharatnagar,
Tq. Dist. Aurangabad

...Appellant
[Orig.Claimants]

VERSUS

- 1] Rajendra s/o Pralhad Rathod,
age Major, occ. Business,
R/o H.No.82/83, Rathod Niwas,
Near Radha – Krishna
Mangal Karyalaya,
Gajanan Colony, Garkheda Parisar,
Tq. Dist. Aurangabad
Mob. No.9922704433,
- 2] United India Insurance Co.Ltd.,
Through its Branch Manager,
Branch office at House No.5-5-72,
Jagtap Complex,
New Osmanpura,
At post Tq. Dist. Aurangabad

...Respondents
[Orig. Respondents]

...

Mr. S.B.Rajebhosale, advocate for Appellants
Mr. A.D.More, advocate for Respondent no.1 absent
Mr. S.R.Bagal, advocate for Respondent no. 2

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT

: 3.10.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT

: 8.10.2018

J U D G M E N T :

Original claimants have filed this appeal against the judgment and award, passed by the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 20 of 2015, for enhancement of compensation awarded by the Tribunal.

2. Respondent no.1 is the owner of offending vehicle and respondent no.2 is the insurer.

3. The Tribunal awarded following compensation under different heads :

Sr. No.	Compensation under head awarded by Tribunal	Amount (Rs.)
1	Future loss of income/ Loss of dependency	6,14,250/-
2	Love & affection to claimant nos. 2 & 3	1,00,000/-
3	Consortium to claimant no.1	1,00,000/-
4	Funeral expenses	25,000/-
	Total	8,39,250/-

4. Heard Shri Rajebhosale, learned counsel for the appellants and Shri Bagal, learned counsel for respondent no.2 insurance company.

5. Learned counsel for the appellants submits that the Tribunal erroneously assessed the notional income of the deceased as Rs.3,750/- per month, considering the annual income of the deceased as Rs.45,000/-.

His next submission is that the Tribunal did not award proper rate of interest on the compensation amount. He prays for enhancement of the compensation. He placed reliance on the judgments in the case of **"Smt. Neeta w/o Kallappa Kadolkar and Ors. Etc. vs Div. Manager, MSRTC,**

Kolhapur" [2015 (6) Mh.L.J. (SC) 19] and "New India Assurance Company Limited vs Smt Rajni Harshwardhan Sharma and Ors. [2016 (1) LJSOFT 135]".

6. On the other hand, learned counsel for respondent no.2 also assailed the quantum of compensation awarded under conventional heads on the ground that in view of law settled by the Larger Bench of the Apex Court, under conventional heads the compensation cannot be awarded more than Rs.70,000/-. He submits that proper rate of interest of 7.5 per cent per annum is awarded by the Tribunal.

7. The ratio in the case of **Smt. Neeta w/o Kallapa Kadolkar vs Div. Manager, MSRTC, Kolhapur** (supra) and **New India Assurance Company Limited vs Smt. Rajani Sharma** (supra) is distinguishable on facts, for the reason that in first case, the deceased was skilled labour as carpenter and in second case the deceased was highly qualified working as Manager.

8. Undisputedly, the deceased was agriculturist, having 60 Are land in his possession. His notional income is considered by the Tribunal at the rate of Rs.45,000/- per annum. Obviously, considering the occupation of the deceased as agriculturist, in absence of specific evidence regarding his monthly income, his notional monthly income is to be assessed on guess work.

9. The Apex Court in the case of **Syed Sadiq Etc. vs Divisional Manager, United Insurance Company Limited [AIR 2014 SC 840]** assessed the notional income of vegetable vendor at the rate of Rs.6,000/- per month. Therefore, the deceased being agriculturist holding 60 Are agricultural land, his notional income cannot be considered less than 6,000/- per month.

10. The postmortem report of the deceased (Exh.31) shows that on the date of accident, his age was 40 years. Therefore, in view of the law settled by Larger Bench of the Apex Court in the

case of **"National Insurance Company Limited vs Pranay Sethi"** [2017 (16) SCC 680], the deceased being 40 years of old, 25 per cent income is to be added in the notional income of the deceased towards future prospects. Thus, monthly income of the deceased is assessed as $\text{Rs.}6000+1500=7500/-$. Accordingly, annual income of the deceased is assessed as $\text{Rs.}7500 \times 12 = 90000/-$.

11. Claimants being total five in number, as dependents in the family of the deceased, in view of ratio in the case of **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr."** [AIR 2009 SC 3104], $1/4^{\text{th}}$ income is to be deducted towards personal expenses of the deceased, which is assessed as $\text{Rs.}90000-22500=67500/-$. Thus $\text{Rs.}67500/-$ is the multiplicand. Considering the age of the deceased as 40 years, multiplier of 15 will be applicable. Thus loss of dependency is assessed as $\text{Rs.}67500 \times 15 = 1012500/-$. In view of law settled by the Apex Court in the case of **National Insurance Company Limited vs Pranay Sethi** (supra), under the

conventional head, compensation of Rs.40000/- is to be awarded for loss of consortium, Rs.15000/- for loss of estate and Rs.15000/- for funeral expenses. Thus the claimants are entitled for following total compensation under different heads.

Loss of dependency	:	Rs.	1012500/-
Loss of consortium	:	Rs.	40000/-
Loss of estate	:	Rs.	15000/-
Funeral expenses	:	Rs.	15000/-

Total	:	Rs.	1082500/-

(Rs. Ten Lac Eighty Two
Thousand Five Hundred only)

12. This compensation amount shall be inclusive of no fault liability amount awarded under Section 140 of the Motor Vehicles Act. The claimants are also entitled to interest on this amount at the rate of nine per cent per annum from the date of filing of petition till realization of the compensation amount. It follows that this appeal deserves to be allowed to enhance the compensation to the extent of Rs.1082500/-.

13. Accordingly, First Appeal No. 990 of 2017 is allowed. The compensation awarded by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 20 of 2015 is enhanced to the extent of Rs.1082500/- inclusive of no fault liability compensation with interest at the rate of nine per cent per annum, from the date of filing of petition till realization of the compensation amount. The award, passed by the Tribunal, be modified accordingly. Parties to bear their respective costs of the appeal. Deficit court fee be recovered from the claimants as per rules.

[SUNIL K.KOTWAL, J.]

dbm