

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

FIRST APPEAL NO. 572 OF 2003

1. Rukhminbai w/o Ramkishanrao Bobde,
Age: 42 years, Occ. H.H.,
R/o Mategaon, Tq. Purna,
Dist-Parbhani.
2. Jaishri d/o Ramkishanrao Bobde,
Aged- 14 years, minor u/g of real
mother, Appellant No. 1.
3. Chhaya d/o Ramkishanrao Bobde,
Age-12 years, occ- Education,
Minor, u/g of real mother
appellant No.1 Rukhminibai.

..APPELLANTS
(Ori. Petitioners)

VERSUS.

1. Syed Hanif s/o Syed Faizoddin,
Age: Major Occ. Business,
R/o: Kumbhar Galli, Purna,
Tq. Purna, Dist-Parbhani.
2. Yadav S/o Kondiba Chite,
Age-37 years, Occu Driver,
R/o Sidharth Nagar, Purna,
Dist-Parbhani.
Since deceased through L.Rs.
- 2-A. Raju s/o Yadav Chite,
Age: 30 years, Occu: Driver,
R/o: Siddharth Nagar, Purna,
Tq. Purna, Dist. Parbhani.
3. United India Insurance Company,
Through it's Branch Manager,
Parbhani.

....RESPONDENTS
(Ori. Respondents)

....

Mr. S.K. Kadam, Advocate for appellants.
Mr. Swapnil S. Dargad, Advocate holding for
Mr. S.G. Chapalgaonkar, Advocate for respondent No. 1
Respondent No. 2-A served
Mr. D.V. Soman, Advocate for respondent No. 3

....

CORAM : A.M. DHAVALÉ, J.

DATED : 26th JULY, 2018.

ORAL JUDGMENT :-

1. This is an appeal by original claimants for enhancement of composite claim on account of death of Ramkishan Manaji Bobde, his one of the daughters, namely, Sangita and injuries caused to another daughter, namely, Chhaya.

2. On 28-08-1992 at about 3.30 p.m. deceased Ramkishan, aged 43 years was proceeding on his bike alongwith his two daughters, Sangita, age 15 years and Chhaya, 12 years along Purna - Nanded Road. When they came near village Mategaon, a truck bearing registration No. MTV-7932 belonging to respondent No. 1 driven by respondent No. 2 rashly and negligently, came from opposite side and gave dash to the motorbike of deceased Ramkishan. As a result of the accident, Ramkishan and Sangita died on the spot, while another daughter Chhaya sustained fracture injuries. Accordingly, Crime No. 115 of 1992 came to be registered against driver of the truck for the offences punishable under sections 304-A, 279 and 427 of the Indian Penal Code.

3. The deceased Ramkishan was serving as Road Karkoon in Zilla Parishad, Nanded and was drawing salary of Rs.2,891/- (record shows, he was receiving salary of Rs.2,708/-). He left behind the claimants a widow and two daughters as legal heirs. The said truck was insured with respondent No. 3. Appellant

No. 3 - Chhaya had undergone surgery and incurred medical expenses. She is physically handicapped. The petitioners claimed that, deceased Ramkishan was earning Rs.25,000/- income from the agricultural land besides his salary income. With these pleadings, the petitioners claimed total compensation of Rs. 7,99,296/- with interest @ 15 per cent per annum as follows:--

1)	Compensation for loss due to death of Ramkishan	Rs.4,50,996/-
2)	Compensation for loss due to death of Sangita	Rs.1,50,000/-
3)	Loss due to love and affection	Rs.24,000/-
4)	Compensation for loss due to disability of Chhaya	Rs.1,00,000/-
5)	Damage to the bike	Rs.15,000/-
6)	Compensation for loss of agricultural income	Rs.60,000/-
Total ... :-		Rs.7,99,996/-

4. Though, respondents No. 1 and 2 appeared, they did not file their written statement. Respondent No. 3 – Insurance Company filed written statement and denied age, income source of deceased Ramkishan, nature of accident and rash and negligent driving of the truck driver. Respondent No. 3 claimed that, the claim was excessive and exorbitant. Respondent No. 3 denied the damage caused to the motorbike of deceased

Ramkishan to the tune of Rs.15,000/-.

5. The learned Member, Motor Accident Claims Tribunal, Parbhani framed issues at Exhibit-28. The claimants examined claimant No. 1- Rukhminbai as (C.W.1) and claimant No. 3- Chhaya as (C.W.2) and relied on number of documents. The learned Member, after hearing the parties jointly assessed the loss of income at Rs.3,34,600/-. The learned Tribunal held that there was contributory negligence on the part of deceased Ramikshan to the extent of 25%, hence, he deducted amount of Rs. 83,650/- and amount of Rs.50,000/- paid towards '*No Fault Liability*', and awarded compensation of Rs. 2,00,950/- on all counts. He awarded amount of Rs. 10,000/- for damage caused to the motorbike and Rs. 40,000/- for death of deceased Sangita. The learned Member also awarded interest @ 12% per annum and proportionate costs. Aggrieved thereby, the claimants-appellants have filed this appeal.

6. Mr. Kadam, learned counsel for the appellants submitted that, learned Member has awarded very meagre compensation on account of death of Ramkishan and Sangita and injuries caused to Chhaya. He submitted that, the learned Member erred in taking into consideration the annual take home salary of the deceased, when it is settled law that only deductions towards income tax and profession tax are permitted. He also argued

that there is no increase given on account of future prospects as held in the case - ***Smt. Sarla Verma Versus Delhi Transport Corporation, (AIR 2009 SC 3104)***. He further argued that in case of death of Sangita notional income should have been considered and with multiplier '18', just and reasonable compensation should have been awarded. He invited my attention towards injury certificate of injured/victim Chhaya and disability sustained to her in the accident. He, therefore, argued that appeal be allowed and just and reasonable compensation may be awarded on account of death of Ramkishan and Sangita and disability of Chhaya.

7. Per contra, Mr. Soman, learned counsel for respondent No. 3- Insurance Company submitted that, there was a contributory negligence on the part of deceased Ramkishan and the learned Tribunal has held that it is 25%. He supported the judgment stating that the Court has considered salary of Ramkishan, which was utilized for the maintenance of family. He also argued that there was no driving license with Ramkishan and that injured - Chhaya was third passenger on the motorbike, which is contrary to provisions of law. He argued that the incident has taken place in 1992 and said fact is required to be taken into consideration while considering the claim for enhancement. The deceased Sangita was a student and she had no source of income. Hence, claim made by the appellants was false and should not be

considered.

8. Mr. Kadam, learned counsel for the appellants has not disputed the fact of 25% contributory negligence on the part of deceased Ramkishan, the Insurance Company has not preferred any appeal to challenge the same findings.

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

Nos.	Points		Findings
I	Whether the learned Tribunal has awarded just and reasonable compensation on account of death of Ramkishan, if not, what order?	..	Partly in the affirmative.
II	Whether the learned Tribunal has awarded just and reasonable compensation on account of death of Sangita, if not, what order?	..	Partly in the affirmative.
III	Whether the learned Tribunal has awarded just and reasonable compensation to injured Chhaya for the disability, if not, what order?	..	Partly in the affirmative.
IV	Whether the learned Tribunal has awarded just and reasonable compensation on account of damages caused to the motorbike, if not, what order?	..	In the affirmative.
V	What order ?	..	As per final order.

REASONS

10. The evidence on record shows that, the deceased

Ramkishan, aged 43 years was serving as Road Karkoon in Zilla Parishad, Nanded. His salary certificate (Exhibit-63) shows that his basic pay was Rs.1,525/- and total salary was Rs. 2,708/- There was heavy deductions towards GPF, Zilla Parishad Co-operative Society's loan and other heads, whereby his net take home salary was Rs. 1,109/-.

11. The learned Tribunal has wrongly held that the deceased Ramkishan was giving only Rs. 900/- for the family. It can be taken into consideration that the deceased had taken loan from GPF and Credit Society and this must have been utilized only for the maintenance of family. Therefore, view taken by the learned Tribunal that deductions for GPF and Society loan should not be held as income and salary contribution should be assumed as Rs. 900/- is not correct and is contrary to law. As per the settled law, total salary of Rs. 2,708/- should have been taken into consideration after deduction of profession tax of Rs. 40/-. It comes to Rs.2,668/-.

12. The Constitutional Bench in the case of **National Insurance Company Limited Versus Pranya Sethi, (2017) 16 SCC 680,** has held as follows -

"59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years,

should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

13. The deceased Ramkishan was permanent employee, aged 43 years. In *Sarla Varma's* case, the Apex Court provides future prospects for permanent employees to the extent of 30% for the age group of above 40 years. It is approved in *Pranay Sethi's* case by Full Bench of Five Judges. Therefore, the claimants are entitled for assumed salary of deceased by addition of Rs.30% i.e. Rs.800/- on account of future prospects. Thus, his salary will have to be assumed at Rs.3,468/- per month and annual salary would be Rs.41,616/-. Since there were four dependents on the deceased Ramkishan, there shall be one forth ($\frac{1}{4}$) deductions from the salary towards personal expenses.

14. The appellants have produced 7/12 extract of land Block No. 50 admeasuring 1 Hectare, 44 R situated at village Mategaon (Exhibit-37), which shows that deceased Ramkrishna was having 50% share in it. The appellants have produced 7/12 extract of land Block No. 115 admeasuring 6 Hectare, 34 R (16 Acres) situated at village Mategaon (Exhibit-36), which shows that deceased Ramkrishna along with his four brothers were having $\frac{1}{5}$ th share in it. The deceased Ramkishan was taking cash crops

like sugarcane, wheat and groundnut in land Block No. 50, whereas, he was also taking crops i.e. Jawar and Wheat in land Block No. 115. There was no specific evidence about loss of agricultural income. It must be considered that the lands are very much available for cultivation by legal heirs of deceased Ramkrishna. The deceased Ramkishan, who was already in service, was looking after the field by using supervisory skill, personal attention and labour. Considering this aspect and value of 1992, I presume loss of agricultural source at Rs.500/- per month i.e. Rs.6,000/- per year. As per the Judgment of *Pranay Sethi's* case, there will be further addition of 25% for future prospects. Loss for agricultural source would be Rs.7,500/-. Thus, total loss would be 49,116/-. After deducting one forth ($\frac{1}{4}$) for personal expenses, loss of income would be Rs.36,837/- for the family. The appropriate multiplier would be '14' and total loss of income would be Rs.5,15,718/-. As per *Pranay Sethy's* case, there will be addition of Rs.40,000/- for loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, total comes to Rs.5,85,718/-. On account of 25% contributory negligence, one forth ($\frac{1}{4}$) amount of Rs.1,46,429/- will have to be deducted and compensation payable for loss of income on account of death of Ramkishan would be Rs.4,39,289/-.

15. So far as deceased Sangita is concerned, she was a minor girl, aged of 15 years, studying in the school. I assume her income @ Rs.10,000/- per annum with multiplier '15'. I award Rs.1,50,000/- to her. There will be addition of Rs.30,000/- towards loss of estate and funeral expenses. Hence, I award total amount of Rs.1,80,000/- on account of death of Sangita.

16. So far as injured Chhaya is concerned, she is an eye witness to the incident. She deposed about the accident. She deposed that after the accident, she became unconscious and regained conscious in the hospital. She sustained injuries to her left leg and left hand and her left leg was plastered. She stated that she could not walk and could not lift heavy weight due to infirmity on account of accident. She has admitted that she was sitting in front of her father on motorbike and due to that vision of her father was partly blocked.

17. The claimants have examined Dr. Nareshkumar Sattaynarayan Dahniwala (P.W.3), who was Associate Professor and Orthopedic Surgeon. He deposed that he had examined Chhaya Ramkishan Bobde. She stated that, Chhaya was having fracture of left forearm and left leg and said fracture was Mal-united. The injured- Chhaya was admitted in the hospital since 28-08-1992 to 03-09-1993. He has issued certificate (Exhibit-60) and thereby certified that, she is having 5% disability because of the fracture. He was not certain whether it was permanent

disability. He deposed that if the disability would not be removed within two years, it would be permanent. The disability certificate (Exhibit-61) shows that, it was issued by Committee of three Doctors including Civil Surgeon and he himself. It shows 5% disability. It appears that, Chhaya was admitted in Sri Guru Gobind Singhji Memorial Hospital, Nanded i.e. in the Government Hospital. There are no medical expenses. The appellants are claiming Rs.24,000/- only for her disability. Considering the permanent disability of Chhaya as per disability certificate produced on record and fact that she was third passenger on bike as well as the Doctor was not certain about permanent disability of the injured, I award lump-sum compensation of Rs.70,000/- under all heads for injuries sustained by Chhaya. Thus, I find that learned Tribunal ought to have awarded amount as follows :-

1)	Compensation for loss of death of Ramkishan	Rs.4,39,289/-
2)	Compensation for loss of death of Sangita	Rs.1,80,000/-
4)	Compensation for injuries and disability sustained by Chhaya	Rs.70,000/-
5)	Compensation for damage to the bike	Rs.10,000/-
Total ... :-		Rs.6,99,289/-
Rounded up to		Rs.7,00,000/-

18. The learned Tribunal had not followed the settled principles on assessment of compensation, which were subsequently modified by the Apex Court's Judgment, and he awarded a sum of Rs.2,00,950/- on all counts, which is too meagre. Therefore, the appeal deserves to be partly allowed and compensation deserves to be enhanced to Rs.7,00,000/-.

19. The learned Tribunal has granted interest @ 12% per annum. However, since year 2004, there is decline in the interest rates and it is reached to 7.5%. Considering all the aspects, I award interest @ 9% per annum. Hence, the appellants partly succeed. I answer the points accordingly and proceed to pass following order:-

- (a) The appeal is partly allowed with proportionate costs.
- (b) The impugned judgment and award dated 21st April, 1994 passed by the Member, Motor Accident Claims Tribunal, Parbhani, in MACP No. 63 of 1992 is set aside and modified as follows:-
 - (i) The respondents do jointly and severally pay to the claimants Rs.4,39,289/- on account of death of deceased Ramkishan, Rs.1,80,000/- on account of death of deceased Sangita and Rs.10,000/- towards damage to the motorbike with interest @ 9 % per annum from the date of application.

- (ii) The respondents do jointly and severally pay to the Chhaya Ramkishan Bobde compensation of Rs.70,000/- towards injury sustained by her with interest @ 9 % per annum from the date of application.
- (iii) Out of the amount payable to the claimants, 75% amount shall be invested in any Nationalized Bank for a period of one year. The claimants shall be entitled to receive the interest for a period of one year. After one year, amounts invested be paid to the claimants without seeking directions from the Court.
- (iv) The amount paid earlier will have to be deducted from the dues payable and there shall be similar adjustment of interest payable.
- (v) The deficit court fees, if any, be recovered from the appellants-original claimants prior to disbursement of the compensation amount in their favour.
- (vi) An award amounting to decree be drawn up accordingly.

[A.M. DHAVAL]
JUDGE