

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

FIRST APPEAL NO. 1330 OF 2017

Sau. Suman Raghunath Wagh,
Age 45 years, Occu. Household,
R/o. Kolhar Bhagwati,
Tq. Shrirampur, Dist. Ahmednagar.

.. Appellants
(Ori.Claimant)

Versus

1. Nandlal Manikchand Kunkulol,
Age 50 years, Occu. Business,
R/o. Kolhar, Tq. Shrirampur,
Dist. Ahmednagar.
2. United India Insurance Company
Limited, Shrirampur Branch.
3. Subhash Shankar Gaikwad,
Age Major, Occu. Truck Driver,
R/o. Fursungi (Phule Vasati)
Tal. Haveli, Dist.Pune (Deleted)
4. Ramchandra Babanrao Phule,
Age Major, Occu. Business,
R/o. Uruli Deoachi,
Tal. Haveli, Dist.PUne (Deleted)
5. The Oriental Insurance Co.Ltd. (Deleted)
6. Prakash Tukaram Sonawane,
Age Major, Occu. Driver,
R/o. Kolhar Budruk,
Tal. Shrirampur, Dist.Ahmednagar (Deleted)
7. Nilkanth Dattatraya Amarapurkar,
Age Major, Occu. Business,
R/o. Station Road, Ahmednagar. (Deleted).
8. Ramchandra Yadav Wagh,(dead)
Age 50 years, Occu. Labour,
R/o. Dehav, Tal. And
Dist. Ahmednagar.

.. Respondents
(Original Opponents)

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Mr.S.L.Bhapkar, Advocate for appellant.
Mr.S.V.Kulkarni, Advocate for respondent No.2.
Respondent No.3 to 7 Deleted.
Respondent No.8 Dead. Respondent No.1 Served.

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CORAM : A.M. DHAVAL, J.

DATE: 16th August, 2018

ORAL JUDGMENT :-

1. Heard. Admit. With consent of the parties, the appeal is taken up for final hearing.
2. Heard Mr. Bhapkar, learned Advocate appearing for the appellant and Mr. Sudhir Kulkarni, Advocate for the respondent No.2. Since the arguments are advanced only on the point of quantum, brief reference to the fact will suffice.
3. On 14.08.1995, son of the claimants aged 22 years was proceeding in a Jeep from Pune to Jejuri. That time, truck coming from the opposite side was driven rashly and negligently and on account of rashness of drivers of both the vehicles, the accident took place and the deceased died. The crime was registered against the truck driver. The

opponent Nos. 1, 2 and 3 in the trial court are driver, owner and insurer of truck. Opponent Nos. 4, 5 and 6 in the trial court are driver, owner and insurer of the Jeep. During the pendency of the claim, the opponent Nos. 1 to 4 were deleted and the claim proceeded only against the owner and insurer of the Jeep. The deceased was travelling in the Jeep and there was comprehensive policy with additional premium for the passengers with limited liability to the extent of Rs. 1,00,000/-.

4. The claim was initially filed by mother aged 45 years. Later on her husband also joined her. It was claimed that the deceased was doing hotel business and was earning Rs.6,000/-per month. The learned trial Judge for want of documents held that the deceased was earning Rs. 3,000/- per month. Though the deceased was bachelor, the trial court deducted 1/3 expenses towards personal expenses. The learned trial Judge adopted multiplier 13 as per the age of the mother, Calculated loss of income Rs. 3,12,000/- and awarded additional Rs. 20,000/- for loss of estate, funeral and expenses of transportation.

5. Shri. Bhapkar, learned advocate for the appellant argued that as the deceased was aged 22 years as per the settled law, the multiplier 18 should have been adopted. There was evidence to show that the deceased was earning Rs.6,000/- per month. There should have been future prospects, and there should have been reasonable compensation including consortium under conventional heads. The rate of interest also should have been higher.

6. Per contra, learned advocate Shri. Kulkarni argued that deceased was a bachelor, and therefore, deduction should have been 50 %. There was no documentary evidence about the income and the learned Judge has rightly assumed his income at Rs.3,000/- per month. He argued that there cannot be future prospects as deceased was not self-employed or on fixed salary. The deceased is not entitled for consortium as he has not left behind his wife.

7. The points for my consideration with my findings are as follows :-

Nos.	Points	Findings
1	Whether the learned trial Judge has awarded just and reasonable compensation to the claimant ?	.. In the negative.

2 What order ?

Appeal is partly allowed.
Compensation .. enhanced to Rs. 3,62,000/- with interest @ 9% per annum.

REASONS

8. The factum of the accident and rashness and negligence on the part of both the vehicles is not in dispute though the charge sheet was filed only against the truck driver. As per the case **KHENYEI Vs. New India Insurance [2016 (2) Mh.L.J. 514]**, when two vehicles are involved, it is a choice of the claimants to sue either one them or both of them. It is a case of composite negligence and both the vehicle owners and insurer are jointly and severally liable. Therefore, deletion of driver, owner, insurer of the truck will not affect the rights of the claimant.

9. Though, there is evidence of CW2 that he had given his hotel business to the deceased for running hotel, there is no documentary evidence to show higher income of Rs.6,000/- as claimed. Nobody starts his own business without any agreement. In the circumstances, the learned trial Judge has rightly held that in absence of documentary

evidence the income of the deceased will have to be assumed as that of daily labourer at Rs.3,000/- per month.

10. It is well settled now that in case of death of bachelor, 50 % deduction is to be made and multiplier to be selected is as per the age of the deceased. Therefore, multiplier would be 18 and the deduction for personal expenses would be 50%. I, therefore find that deceased should be assumed to be earning Rs.3,000/- per month. Loss of income would be 50 % Rs. 1,500/- per month i.e. Rs. 18,000/- per annum with multiplier of 18, the loss of earning for the family would be Rs. 3,24,000/-. As per ratio in case - ***National Insurance Company Limited Versus Pranay Sethi, [(2017) 16 SCC 680]*** the claimants are entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- for loss of funeral expenses. Compensation for loss of consortium can be awarded only to a spouse and not to mother.

11. In addition, I award Rs.8,000/- as awarded by the trial court for transportation expenses.

12. As per the Policy, the deceased was passenger in jeep and he will not be covered by statutory liability of the owner

with respect to third party. There is contractual liability of the insurance company to indemnify the owner, due payment of additional premium. Since the liability was created by paying additional premium and restricted to Rs.1,00,000/-, the insurance company is liable as rightly held by learned trial Judge to the extent of Rs.1,00,000/-. The balance amount shall be payable by respondent No. 6. Thus, the claimant is entitled for Rs.3,62,000/-. The death took place in 1995, and therefore, rate of interest 7 % per annum is too low. I award interest @ 9 % per annum from the date of the application. The appeal deserves to be partly allowed. Hence, the order :-

ORDER

1. The appeal is partly allowed.
2. The impugned Judgment and Award dated 31th March, 2011 passed by the Member, Motor Accident Claims Tribunal, Shrirampur, Dist. Ahmednagar, in MACP No. 219 of 2000 (Old MACP No.1075 of 1995) are hereby aside and modified as follows :-

- (i) The respondent No. 5 do pay to the claimant the

sum of Rs.3,62,000/- (inclusive NFL amount) along with interest @ 9 % per annum from the date of the claim petition i.e. 05.10.1995 and proportionate costs. Out of the said amount, the original respondent No. 6 (the appellant) United Insurance shall be liable to indemnify the owner to the extent of Rs.1,00,000/-.

3. The award amounting to decree be drawn up accordingly .

(A.M.DHAHALE, J)

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