

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

FIRST APPEAL NO. 600 OF 2017

1. Mangla w/o Sonaji More
Age : 47 years, occu.: household
2. Sonaji Sulaji More
Age : 57 years, occu.: service

Both r/o N-9, A-116, M-2, 56/1,
Sant Dnyaneshwar Nagar,
CIDCO, Aurangabad.

Appellants.

Versus

1. Firoz Khan Faruk Khan Pathan
Age : major, occu.: owner of
offending vehicle.
R/o Virashaiv Samaj Mandirachya
Pudhe, Ambhai, Taluka Sillod,
District Aurangabad.
2. Chand Khan Usman Khan Kureshi
Age : 39 years, occu.: driver
R/o Nurahani Masjid, Kurhad Kh.,
Taluka Pachora, District Jalgaon.
3. The Divisional Manager,
New India Assurance Company Ltd.,
Adalat Road, Aurangabad.

Respondents.

Mr. U.N. Shete, Advocate for the appellants.
Mr. V.D. Patnoorkar, Advocate for respondent Nos.1 and 2.
Mr. A.S. Osmanpurkar, Advocate for respondent No.3.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 12th October 2018.

Judgment pronounced on : 17th October 2018.

JUDGMENT.

1. This appeal is directed by the original claimants in Motor Accident Claim Petition No.125/2013 against the judgment and award passed by Motor Accident Claims Tribunal, Aurangabad (hereinafter referred to as "Tribunal").

2. This appeal is only for enhancement of compensation. The Tribunal awarded compensation of Rs. 4,00,000/- (Rupees Four Lakh) with interest thereon at the rate of Rs. 9% per annum from the date of petition.

3. Respondent No.1 is the registered owner of offending vehicle, respondent No.2 is its driver and respondent No.3 is the Insurer of the offending vehicle.

4. The facts in nutshell are that on 24.12.2012 deceased Dinesh was travelling as a pillion rider by motorcycle bearing registration No. MH-20-AH-5693 with his brother Manoj, who was driving the motorcycle, by Sillod to Aurangabad road. That time offending Matador bearing registration No.MH-18-M-0781

came from opposite direction and dashed against the motorcycle resulting into serious injuries to deceased Dinesh. The injured Dinesh was taken to Apex Hospital, Aurangabad. However, he succumbed to his injuries on 28.12.2012. Therefore, this petition for compensation is filed by the parents of deceased Dinesh who was bachelor at the time of his death.

5. No cross objection or cross appeal is filed by owner of the offending vehicle or its Insurance Company. Therefore, the discussion in this appeal is restricted with only the quantum of compensation.

6. Heard Mr. Shete, learned Counsel for the appellants, Mr. V.D. Patnurkar, learned Counsel for respondent Nos.1 and 2 and Mr. A.S. Osmanpurkar, learned Counsel for respondent No.3- Insurance Company.

7. Learned Counsel for the appellants submits that the learned Tribunal considered meager notional income of deceased at the rate of Rs. 3,000/- per month, when the deceased was well qualified person who used to earn Rs. 7,000/- per month by running Coaching Classes.

8. His next submission is that the Tribunal did not

consider the compensation for loss of future prospects. He has pointed out that even under conventional heads the Tribunal awarded meager compensation of Rs.2500/- towards loss of estate and Rs. 2000/- towards funeral expenses. He prayed for enhancement of compensation.

9. In reply, learned Counsel for respondent No.3 – Insurance Company submits that as no documentary evidence is placed on record by the claimants regarding income of deceased, the learned Tribunal rightly considered notional income of the deceased. He has pointed out that no other witness is examined by the claimants to prove occupation of deceased as Coaching Class teacher. He submits that as the deceased was student, no compensation can be awarded for the loss of future prospects. He submits that Mangla (PW-1) has admitted in her cross-examination that the deceased was taking education at the time of accident. However, he fairly concedes that under conventional heads appropriate compensation may be awarded in accordance with the judgment of Larger Bench of the Supreme Court in the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi and others” [(2017) 16 SCC 680]**.

10. In the case at hand, while determining the quantum of compensation firstly I have to ascertain what was the age of deceased on the date of his death. The claimants have placed on record School Leaving Certificate of the deceased Dinesh, which shows that his date of birth is 26th February 1989. He died on 28.12.2012. Thus, at the time of death he was aged about 23 years and 9 months. Diploma Certificate placed on record shows that the deceased had obtained Diploma in Education in First Class. His S.S.C. and H.S.C. certificates clearly show that he was meritorious student. Deceased had also completed MH-CET Course. He had also passed Intermediate Drawing Examination in the year 2009, in 'B' Grade. His name was also enrolled in Employment Exchange. He had also completed N.C.C. Course in 'A' Class. Thus, the various certificates placed on record clearly indicate that the deceased was an all-rounder and intelligent young person.

11. On behalf of the claimants, mother of deceased namely Mangla More stepped in witness box and she deposed that by running Coaching Classes for 1st to 7th Standard students, the deceased used to earn Rs. 7,000/- per month. Despite

searching cross-examination by learned Counsel for the Insurance Company, she stood constant regarding monthly income of deceased at the rate of Rs. 7,000/- per month. It is to be noted that for the income by running private Coaching Classes, there cannot be any documentary evidence available. Taking into consideration the educational qualification of the deceased as Diploma holder in Education, certainly the version of Mangla More (PW-1) is acceptable that the deceased used to earn Rs. 7,000/- per month by running Coaching Classes.

12. As submitted by learned Counsel for the Insurance Company, Mangla More (PW-1) has nowhere admitted in her cross-examination that at the time of accident, deceased was taking education. On the basis of admission given by Mangla More (PW-1) that deceased was college going student, it cannot be held that he had no source of income by running Coaching Classes. Even a college going student can run private Coaching Class for 1st to 7th Standard school going students. Therefore, I have no hesitation to hold that the notional income of the deceased cannot be less than Rs.7,000/- per month.

13. Deceased was certainly below the age of 40 years. Therefore, deceased being self-employed person, an addition of 40% has to be made in his annual income, towards loss of future prospects. The annual income of the deceased can be assessed as Rs. 84,000/- (7000 x 12). By adding 40% i.e. Rs. 33,600/-, the annual income of the deceased would come to Rs. 1,17,600/-

14. As the deceased was unmarried bachelor son of the claimants, in view of the verdict in the case of **“Sarla Varma and others Vs. Delhi Transport Corporation and another”** [**2009 (6) SCC 121**], one-half income is to be deducted towards personal expenses of the deceased. Thus, the contribution of deceased to his family is Rs. 58,800/- per year.

15. As the deceased was 23 years old, the multiplier of “18” is applicable. Thus, the loss of dependency would of Rs.10,58,400/-. The claimants are entitled to compensation of Rs.10,58,400/- under the head “loss of dependency”.

16. In addition to this, in view of the guidelines issued by the Apex Court in the case of **Pranay Sethi** (supra), under the conventional heads, the claimants are entitled to Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

17. The claimants have also placed on record bills of medicines and hospital charges bills for incurred by them for the treatment given to deceased at Apex Hospital, till his death. These bills of Rs. 79,718/- are admitted by learned Counsel for the Insurance Company. Therefore, compensation of Rs. 79,718/- deserves to be awarded under the head “medical expenses”.

18. Thus, the claimants are entitled to the following compensation under different heads.

Loss of dependency	:-	Rs. 10,58,400/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Medical expenses	:-	Rs. 79,718/-

Total	:-	Rs. 11,68,118/-

19. Claimants are entitled to interest on the above-mentioned amount at the rate of Rs. 9% per annum from the date of filing of petition till realization of entire compensation amount. This compensation amount shall be inclusive of the amount received under the head “No Fault Liability”.

20. Claimant No.1 Mangla Sonaji More being mother of deceased, she is the only dependent of the deceased. Therefore,

the above-mentioned compensation amount deserves to be paid only to claimant No.1 Mangla Sonaji More.

21. In the result, First Appeal No.600 of 2017 is allowed. The award passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 125/2003 is modified to enhance the compensation to the extent of Rs.11,68,118/- (Rupees Eleven Lakh Sixty Eight Thousand One Hundred and Eighteen).

22. On depositing the compensation amount in the Tribunal, 50% amount out of of compensation amount shall be paid to claimant Mangla Sonaji More by account payee cheque and remaining 50 % amount shall be invested in fixed deposit in her name in any Nationalized Bank of her choice for a period of two years. Deficit Court-fees be recovered from the claimants.

23. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

vdd/