

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

FIRST APPEAL NO. 5191 OF 2017

United India Insurance Company Ltd.
Through The Divisional Manager/
Authorized Signatory,
Divisional Office, New Osmanpura,
Dist. Aurangabad.

...Appellant
(Original Respondent No.2)

Versus

1. Jankibai Wd/o.Dilip Rathod
Age : 26 Years, Occu: Household,
2. Kum. Sapna D/o. Dilip Rathod,
Age : 7 years, Occu: Education,
Minor u/g. Of respondent no.1
3. Chetan S/o. Dilip Rathod
Age : 6 years, Occu : Nil,
Minor u/g of respondent No.1
4. Shilabai W/o. Kashiram Rathod,
Age: 55 years, Occu : Household
5. Kashiram S/o. Ananda Rathod,
Age : 55 years, Occu: Nil,

All R/o. At Rampura Tanda (nimbayati),
Post Bahulkheda, Tq. Soygaon,
Dist. Aurangabad.

6. Dr. Pankaj S/o. Kanhaylal Chordiya,
Age : Major, Occu: Business,
Owner of Truck No. MH-18-M-7511,
R/o. Pimpalner, Tq. Sakri,
Dist. Dhule.

7. Arun S/o. Deoram Deore,
Age : 43 Years, Occu. Driver
R/o. Daregaon, Tq. Malegaon,
Dist. Nashik.

Respondents

(Resp. Nos. 1 to 5 – Org.Claimants)

Resp. Nos. 6 & 7 – Org. Resps. 1 & 3)

Mr. Mohit Deshmukh, Advocate h/f Mr. S.G. Chapalgaonkar,
Advocate for Appellant
Mr. M.K. Bhosale, Advocate for Respondent No.2

CORAM : A.M. DHAVAL, J.

DATE : 3rd AUGUST, 2018

ORAL JUDGMENT :

1. Heard.
2. By consent of the parties, appeal is taken up for final disposal at admission stage.
3. The original respondent No.2 has preferred this appeal to challenge the quantum of compensation of Rs. 14,96,000/- awarded by Member, Motor Accident Claim Tribunal, Aurangabad to respondent Nos. 1 to 5 in MACP No.476 of 2016 by Judgment dated 07.09.2017.

4. Deceased Dilip was husband of claimant No.1 Jankibai and father of two minor children, Sapna and Chetan aged 5 and 4 years and son of claimant No. 4 and 5. He was shown to be aged 24 years. Admittedly, he died in a road accident involving tempo and truck. The deceased was proceeding in tempo from Pachora to Bhadgaon. While the tempo reached near Mangesh farm, truck MH-18 M-7511 belonging to original respondent No.1 driven by respondent No.3 gave a dash to the tempo from rear side resulting into injuries to the deceased. The deceased was taken to the Rural Hospital, Pachora, and thereafter, he succumbed to the injuries. Crime was registered against truck driver at Pachora Police Station. In the claim petition, rashness and negligence of truck driver was held to be proved. Relying on inquest panchanama, age of the deceased was held 30 years, and there were five dependents on him. It was claimed that he was partner in M/s. Karnika Traders and was earning Rs. 12,000/- to Rs.15,000/- per month but since there was no documentary evidence, his income was assumed Rs. 7,000/- per month. On this assumption, the loss of earning to the family was drawn as follows :-

Rs. 70,000 – 1750 ($\frac{1}{4}$) for personal expenses

Loss of Rs. 5,200/- per month. Rs. 63,000/- p.a. X 17

= Rs. 10,71,000/-

5. Learned Member of the MACT also awarded following compensation amount under conventional heads and granted total Rs. 14, 96,000 @ 7 % per annum.:-

1. Loss of estate	Rs. 1,00,000/-
2. Loss of consortium	Rs. 1,00,000/-
3. Love and affection for two minor children and the parents Rs. 50,000/- each.	Rs. 2,00,000/-
4. Funeral expenses	Rs. 25,000/-
Rs. 4,25,000/-	

6. Aggrieved by Award, insurance company has filed this appeal. The order of admission shows that the learned advocate for the appellant had restricted the claim only to the award of compensation of Rs. 4,25,000/- under conventional heads.

7. Learned advocate Shri. Chapalgaonkar relied on

National Insurance Company Vs. Pranay Sethi to submit that as per Full Bench Judgment of five Judges of the Apex Court, the amount of compensation under conventional heads cannot exceed Rs. 70,000/- i.e. Rs. 40,000/- for loss of consortium, Rs. 15,000/- for loss of estate and Rs. 15,000/- for loss of funeral expenses.

8. Per contra, learned advocate for the respondents submits that the learned trial court has properly awarded the compensation under conventional heads as per the Supreme Court Judgments then prevailing and no interference is called for. He has relied on ***Bhogireddi Varalakshmi and Others Vs. Mani Muthupandi and Ors. (2018) 11 SCC Page 73*** in which compensation of Rs. 1,00,000/- for consortium and Rs. 1,00,000/- for love and affection were granted.

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

1. Whether the learned trial Judge has awarded excessive compensation to the tune of Rs. 3,55,000/- ? In the affirmative

2. What order ?

Total claim is reduced from Rs. 14,96,000/- to Rs. 11,41,000/- with interest @ 7 % per annum.

REASONS

10. Considering the arguments, I find that Pranay Sethi's judgment clearly lays down that the compensation under the conventional heads can be only to the tune of Rs. 70,000/- as argued.

11. The arguments relating to non retrospectivity of the Judgment has no substance. The Judgment only interprete the provisions of law and lays down guidelines applicable to the facts of particular situation. This will be binding in all matters irrespective of the date of incident, whether prior to or subsequent to the Judgment. It will not apply to the matters which have become final. Since the appeal was pending and it is continuation of the main proceedings, it will certainly apply to the present facts. If the Apex Court feels that it will cause enumerable difficulties, it specifically lays down that the Judgment will not apply to the previous

decisions or transactions. There is no such direction in Pranay Sethi's case. The Judgment will be applicable to all the proceedings of trial court as well as appeals before this court. Therefore, compensation will have to be reduced from Rs.4,25,000/- to Rs.70,000/- under conventional heads.

12. Advocate for the respondents claimed that future prospects should have been granted by trial court but in the first place, the claimants have not preferred appeal or cross objection and secondly the deceased was a labourer. He was not self employed or having fixed salary. Hence, he was not entitled for future prospects. In fact, the learned trial Judge assumed his earning of Rs. 7,000/- per month is on higher side.

13. It was argued that the assumed income of Rs. 7,000/- of the deceased is on higher side. When there was no material, income should have been assumed at Rs. 7,500/-. In this regard, I find that the learned trial Judge at the time of admission only has restricted his appeal to the above referred issue. Hence, it is not permissible to raise this issue now. Hence, I answer the points for my determination as in the affirmative and pass following order :-

ORDER

- (A) The Judgment and order in M.A.C.P. No. 476 of 2016 passed by Motor Accident Claims Tribunal, Aurangabad dated 07.09.2017 is hereby set aside and modified as follows :

The respondent Nos. 1 and 2 do jointly and severally pay to the claimants Rs. 11,41,000/- with interest @ 7 % per annum and proportionate costs of the trial court.

- (B) The parties shall bear their own costs of this Appeal.
- (C) The Award amounting to decree shall be drawn up accordingly.

(A.M. DHAVAL, J)

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