

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

FIRST APPEAL NO. 132 OF 2017

1. Sangeeta w/o Bhanudas Jadhav,
Age : 34 years, Occu.: Household,
2. Chayya d/o Bhanudas Jadhav,
Age : 15 years, Occu.: Education,
3. Shivraj s/o Bhanudas Jadhav,
Age : 11years, Occu.: Student,
4. Ravi s/o Bhanudas Jadhav,
Age : 9 years, Occu.: Nil,

Appellant Nos. 2 to 4 are minors
U/g of appellant No.1.

5. Kondabai w/o Eknath Jadhav,
Age : 70 years, Occu.: Household,

All R/o.: Bhavan, Tq. Sillod,
District : Aurangabad.

Appellants.
(Ori. Claimants)

Versus

1. Bhanudas s/o Namdeo Petare,
Age : 35 years, Occu.: Driver,
R/o.: Sanjul Bildha,
Tq. Phulambri, Dist. Aurangabad.
2. Subhash s/o Asaram Jaiswal,
Age : 33 years, Occu.: Business,
R/o.: Bhaigaon, Ta.: Aurangabad,
District : Aurangabad.
3. United India Insurance Co. Ltd.
Aurangabad.

4. Laxman s/o Abarao Dobale,
Age: 32 years, Occu.: Driver,
R/o.: Ambedkar Nagar, CIDCO,
Aurangabad.
(Appeal is dismissed against him,
as per Court's order dated 29.11.2012)
5. M/s. Laxmi Construction Company,
Ajaydeep N-3, CIDCO, Aurangabad.
6. National Insurance Co. Ltd.
Aurangabad.

Respondents.

Mr. M. K. Deshpande, Advocate for the appellants.
Mr. Y. I. Thole, Advocate for respondent Nos.1 & 2 (absent).
Mr. S. G. Chapalgaonkar, Advocate for respondent No.3.
Mr. V. P. Latange, Advocate for respondent No.5 (absent).
Mr. D. V. Soman, Advocate for respondent No.6

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 11th December, 2018.

Judgment pronounced on : - 4th January, 2019.

JUDGMENT.

1. This appeal is directed by original claimants against judgment and award passed by Motor Accident Claims Tribunal, Aurangabad (hereinafter referred to as 'Tribunal') passed in M.A.C.P. No. 139 of 2000. Respondent No.1 is the driver and respondent No.2 is owner as well respondent No.3 is the insurer of Taxi Jeep involved in the accident. Respondent No.4 is the driver

and respondent No.5 is the owner as well as respondent No.6 is the insurer of the Truck involved in the accident.

2. The Tribunal exonerated the respondent No.3 insurer of the Taxi Jeep and that order is not challenged in the present appeal by the claimants. In this appeal only quantum of compensation of Rs.2,34,000/- is challenged by the claimants. Out of this compensation, joint and several liability to pay 50% amount is saddled on respondent Nos. 1 and 2 and remaining 50% amount is saddled on respondent Nos. 4 to 6 with interest thereon @ 6% p.a. Against that finding no cross objections or cross-appeal is preferred by the respondents. Therefore, in this appeal, I have to only determine the just and reasonable compensation payable to the claimants.

3. Heard Shri. M. K. Deshpande, learned counsel for the claimants, Shri S. G. Chapalgaonkar, learned counsel for respondent No.3 and Shri. D. V. Soman, learned counsel for respondent No.6 – Insurance Company of the Truck.

4. Learned counsel for the appellants submits that the accident occurred on 01.01.2000 and in that accident deceased Bhanudas Eknath Jadhav, who was only 32 years old, succumbed to

the injuries sustained in the accident. He submits that occupation of the deceased Bhanudas was Mason. However, learned Tribunal considered meager notional income of the deceased as Rs.1,500/- per month and awarded less compensation. He submits that even income from agriculture land of the deceased is not considered by the Tribunal.

5. Next submission of the learned counsel for the appellants is that the Tribunal erroneously deducted 1/3rd amount from the annual income of the deceased and it did not consider the loss of future prospect of the deceased while determining the compensation. He has pointed out that no compensation is awarded by the Tribunal under conventional heads. He prays for enhancement of the compensation. He placed reliance on the cases **National Insurance Company Limited Vs. Pranay Sethi and others [2018 (3) Mh. L.J. 70]** and **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another [(2009) 6 SCC 122]**.

6. Learned counsel for respondent No.3 submits that no liability is saddled on respondent No.3 to pay the compensation and the Insurance Company of the Taxi Jeep is exonerated, which is also

not disputed by the claimants.

7. Learned counsel for respondent No.6 supported the judgment and award passed by the Tribunal on the ground that the land in possession of the joint family of the deceased is small in area and the joint family continued to cultivate that land even after the death of the deceased. He submits that the Tribunal rightly determined the notional income of the deceased as Rs.1,500/- per month and rightly passed the award. He prays for dismissal of the appeal.

8. In the case at hand, the admission card of the deceased when he appeared for SSC Board examination is filed on record at Exh.35/2. After going through this admission card, it emerges that the date of birth of the deceased is 04.04.1971. Thus, on 01.01.2000 i.e. on the date of the accident, the deceased was below the age of 30 years. Therefore, as per the guidelines issued by the Apex Court in **Smt. Sarla Verma** (supra), multiplier of “17” is applicable in the case at hand. When I proceed to determine the notional income of the deceased, I cannot ignore that the occupation of the deceased was Mason, which is not at all disputed by learned counsel for the Insurance Company. Mason is not an ordinary field labour, but he

is a skilled labour in construction. In addition to the oral evidence of the claimant Sangita Jadhav (PW-1), the claimants have also examined Madhav Kalam (PW-2), who is the resident of village Bhavan and whose well was constructed by the deceased in the year, 1996. From the evidence of Madhav Kalam (PW-2), it emerges that he had a contract of construction to the deceased @ Rs.400/- per ring and total twelve rings were to be constructed by the deceased. No doubt, from his cross-examination, it emerges that there are some other Mason in his village like the deceased and population of his village is 2400. However, on the basis of such admission, inference cannot be drawn that the income of the deceased cannot be more than Rs.1,500/- per month. The learned Tribunal has given unnecessary importance to this admission and determined the notional income of the deceased @ Rs.1,500/- per month. It cannot be ignored that the deceased can work as mason anywhere in nearby villages or even in cities. Therefore, considering the earning capacity of the deceased as skilled labour in construction and his young age below 30 years, his notional income cannot be less than Rs.5,000/- per month even in the year, 2000. It cannot be ignored that in the case of **“Laxmidhar Nayak and others Vs. Jugal**

Kishore Behera and Others” [2018 (SC) 204), the Apex Court considered the notional income of house wife-cum-labour @ Rs.4,500/- per month who died in the year 1991. Thus, accordingly, I hold that the notional income of the deceased was Rs.5,000/- per month.

9. Thus, it follows that the annual income of the deceased was Rs.60,000/-. As the deceased was self-employed and the skilled worker below the age of 30 years, in accordance with law laid down by the Apex Court in the case of “**Pranay Sethi**” (supra), 40% income is to be added in the annual income of the deceased towards loss of future prospect. Thus, the annual income of the deceased comes to Rs.84,000/-.

10. As per guidelines issued by the Apex Court in the case of **Sarla Verma** (supra), as in the family of the deceased, number of dependents are five, 1/4th income is to be deducted from annual income of the deceased towards his personal expenses. Thus, after deducting Rs.21,000/- as 1/4th amount towards personal expenses of the deceased from his annual income, the annual contribution by the deceased to his family comes to Rs.63,000/-. After applying multiplier of “17”, the loss of dependency comes to Rs.10,71,000/-.

11. As ruled by the Apex Court in the case of “**Pranay Sethi**” (supra), the claimants are entitled to following compensation under conventional heads.

- | | | |
|----|--------------------|---------------|
| 1) | Loss of consortium | - Rs.40,000/- |
| 2) | Loss of estate | - Rs.15,000/- |
| 3) | Funeral expenses | - Rs.15,000/- |

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

- | | | |
|----|--------------------|------------------|
| 1) | Loss of dependency | - Rs.10,71,000/- |
| 2) | Loss of consortium | - Rs.40,000/- |
| 3) | Loss of estate | - Rs.15,000/- |
| 4) | Funeral expenses | - Rs.15,000/- |

Total - Rs. 11,41,000/-

13. As the respondents did not settle the fair and just claim of the compensation and compelled the claimants to knock the doors of this Court, the claimants are also entitled to interest on the compensation amount @ 9% p.a. from the date of filing of the claim petition till realization of the entire compensation amount. Accordingly, First Appeal No.132 of 2017 is allowed with costs.

14. The award passed by the Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No. 139 of 2000 be modified to enhance the compensation to the tune of Rs.11,41,000/- (inclusive of

the compensation under the head of 'no fault liability') with interest thereon @ 9% p.a. from the date of filing of claim petition till realization of the entire compensation amount.

15. Considering the advanced age of appellant no.5-claimant Kondabai w/o Eknath Jadhav, out of the compensation amount, only 10% amount shall be paid to her by separate account payee cheque through the Tribunal. Remaining compensation amount shall be equally apportioned amongst claimant Nos. 1 to 4.

16. 50% amount payable to the claimant Nos. 1 to 4 shall be paid to them through the Tribunal by separate account payee cheques. Remaining 50% amount shall be invested separately in the name of claimant Nos. 1 to 4 in any Nationalized Bank of their choice for the period of next three years.

17. Pre-mature withdrawal is not permissible. Concern Bank be informed accordingly.

18. Award be modified in above said terms.

19. The first appeal is disposed of in above said terms.

(SUNIL K. KOTWAL)

JUDGE