

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

First Appeal No. 3090 of 2018

District : Ahmednagar

Reliance General Insurance Co. Ltd.,
Having Corporate Office 570,
Rectifier House,
Naigaon Cross Road,
Next to Royal Industrial Estate,
Wadala (W), Mumbai 400 031 and
135 Ground Level, Pushpam Plaza,
Near Nandadeep Hotel,
Tadiwala Road, Pune - 411 001,
its Divisional Office at
Office No. C-9 and C-10,
IInd Floor, ABC complex,
Adalat Road, Aurangabad 431 001.

.. Appellant
(Original
respondent
no.02)

versus

1. Murlidhar s/o. Surajmal Kabra,
Age : 62 years,
Occupation : Pensioner
2. Kantabai w/o. Murlidhar Kabra,
Aged : 57 years,
Occupation : Household,
Brahman Lane, Maliwada,
Ahmednagar 414 001.
3. Rushikesh s/o. Appaso Satbhai,
Age : 27 years,
Occupation : - ,
R/o. Satbhai Lane,
At Post Jejuri,
Taluka Purandar,
Dist. Pune.

.. Respondents.

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Mr. V.N. Upadhye, Advocate, for the appellant.

*Mr. P.R. Katneshwarkar, Advocate, holding for
Mr. L.B. Pallod, Advocate, for respondents
no.01 and 02 (Caveators).*

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 27th June 2019**

**Date of pronouncing
the judgment : 13th August 2019**

JUDGMENT :

01. Present appeal has been filed by the original respondent no.02 - Insurance Company, challenging the judgment and award passed in Motor Accident Claim Petition No. 175 of 2016 by learned Member of the Motor Accident Claims Tribunal, Ahmednagar, dated 22-06-2018, whereby the petition filed by present respondents no.01 and 02 came to be partly allowed.

02. The factual matrix leading to the appeal are, that the original claimants had filed the claim petition for getting compensation on account of death of their son Krushna Murlidhar Kabra, who expired on Nagar-Pune road in front of Bandhan Bank, Kedgaon, Ahmednagar, on 31-12-2015. Deceased Krishna along with his friend were proceeding on motorcycle bearing No. MH-16/BN-9988. Deceased himself was driving the

same whereas his friend was pillion rider. They were dashed by Mahindra Bolero vehicle bearing No. MH-12/MB-6471 which had come in rash and negligent manner. The dash was from back side. Both the riders of the motorcycle received severe injuries. Deceased was shifted to Civil Hospital, Ahmednagar and then to Nobel Hospital, Ahmednagar. However, he succumbed to injuries on 01-01-2016. The driver of Bolero vehicle has been prosecuted by police. Respondent no.01 was the owner of the vehicle and the said vehicle was insured with respondent no.02 on the date of the accident. Deceased was aged 22 years and was taking education in M.Com. It was contended that he was doing private job and getting monthly salary of Rs. 18,000/-. He was in share purchasing and selling business and in addition, he was getting Rs.3000/- per month. Thus, he was getting total income of Rs. 21,000/- per month. Therefore, claimants have claimed compensation of Rs. 55,00,000/-.

03. The claim petition was resisted by both the respondents by filing separate written statement. They have denied all the averments in the petition, especially age, income and occupation of the deceased. They have also denied the allegations in respect of rashness and negligence. The Insurance Company had taken statutory defence.

04. Only the claimants led oral evidence as well as documentary. Respondents preferred not to lead evidence of any form. Taking into consideration the said evidence and hearing both sides, the learned Tribunal had held that the claimants have proved that Krushna died in the said accident and the said accident occurred due to the rashness and negligence on the part of the driver of Mahindra Bolero. The Insurance Company failed to prove breach of terms of policy and therefore, both the respondents are liable to pay compensation jointly and severally to the claimants. Compensation of Rs. 21,90,000/- has been awarded together with interest at the rate of 8 % per annum.

05. Heard learned Advocate Mr. V.N. Upadhye for the appellant. Heard learned Advocate Mr. P.R. Katneshwarkar, holding for learned Advocate Mr. L.B. Pallod, for respondents no.01 and 02. Statement was made that respondent no.03 need not be served and therefore, notice was not issued.

06. It has been vehemently submitted on behalf of the appellant, that the appellant is challenging the judgment and award mainly on the point of quantum. Excessive compensation has been awarded when, in fact, the law requires just compensation. Learned Tribunal has discarded the evidence adduced by the claimants on the point of income and observed

that except bare words of the witnesses, there is nothing on record to support that deceased was getting in all Rs. 21,000/- per month. However, taking into consideration the fact that deceased was taking education in M.Com., it was held that he would have got or had capacity to earn Rs. 21,000/- per month. There was no basis for this observation and therefore, the calculation based on the said imaginary figure has ended in granting bonanza to the claimants.

07. Learned Advocate representing the claimants supported the reasons given by the Tribunal and also submitted that though the learned Tribunal has discarded the oral evidence adduced by the claimants, it was observed that the deceased was a brilliant student, as it appears from the degree certificate of B.Com. and he was pursuing his Master's degree; definitely, the Tribunal was justified in holding that the deceased had the capacity to earn Rs. 20,000/- per month.

08. Taking into consideration the fact that the respondents have not challenged other findings given by the Tribunal, scope of the appeal is limited to the extent of quantum. Therefore, that much evidence is required to be scanned. Further, it is also to be noted that cross objections or cross appeal has not been filed by the claimants seeking enhancement on

the ground that the evidence led by them on the point of income of the deceased had been unnecessarily discarded. Therefore, in fact, whatever observations have been made by the learned Tribunal while appreciating the evidence of PW 02 Madhusudan Sarda, PW 03 Ishwar and PW 04 Amit Shingavi will have to be maintained as it is. None of these witnesses have been believed by the learned Tribunal on the ground that their testimony is not supported by documentary evidence though in fact, it ought to have been taken into consideration the fact that they were allegedly paying so much of amount to deceased.

09. What remains after discarding the oral evidence in respect of point of income adduced by the claimants is, the only guess work that has been done by the learned Tribunal. The documents in the form of degree certificate of B.Com. was produced wherein it appears that the deceased had passed B.Com. in first class. There was no doubt, that he was taking education in M.Com. Under such circumstance, when the claimants have not come with a case, what were his plans in future, then what could have deceased achieved on the basis of his M.Com. degree, is required to be imagined. The accident has occurred in 2015. The Courts are also required to take a note of the fact of unemployment prevailing in the society. Even highly qualified young persons are unable to get job and if at all they are able to get,

then they are required to be satisfied with a lesser salary. Under such circumstance, merely on the count that deceased was a brilliant student, his monthly salary cannot be assessed to Rs. 20,000/- per month, but it was reasonable to arrive at a conclusion that he could have fetched a job giving him salary of Rs. 10,000/- per month, for his said qualification of M.Com.

10. Learned Tribunal had included future prospectus in the said amount of Rs. 20,000/-. But this type of calculation is not expected in view of the decision in *National Insurance Company Limited Vs. Pranay Sethi & others* [AIR 2017 SC 5157]. Taking into consideration his income at Rs. 10,000/- per month, which could have been income under the category of self-employed, 40 % of the same is required to be added towards future prospectus. That amount comes to Rs. 4,000/- per month. Therefore, his income for our calculation purposes would Rs. 14,000/- per month. Yearly, it would be Rs. 1,68,000/- (Rs.14,000/- per month X 12 months).

11. Further, taking into consideration the fact that the deceased was a bachelor and in view of the decision in *Sarla Verma & others Vs. Delhi Transport Corporation & another* [(2009) 6 SCC 121], half of the same i.e. 50 % is required to be deducted towards personal

expenditure. That amount comes to Rs. 84,000/- and therefore, dependency of the claimants would be Rs. 84,000/- per annum. The deceased was 22 years old young boy and therefore, the just multiplier would be '18' as per the decision in *Sarla Verma's case (supra)*. After applying the multiplier, the total loss of dependency for the claimants would be Rs. 15,12,000/-. Further, in view of the decision in *Pranay Sethi's case (supra)*, amount of Rs. 15,000/-, 40,000/- and 15,000/- is awarded towards loss of estate, loss of consortium and funeral expenses, respectively. Thus, the claimants are entitled to get compensation of Rs. 15,82,000/-.

12. The amount that has been awarded based on the income of the deceased, at the rate of Rs. 20,000/- per month, calculated by the learned Tribunal, is excessive and therefore, deserves to be corrected. The appeal deserves to be partly allowed.

13. Hence, the following order :-

(a) The appeal is hereby partly allowed.

(b) The judgment and award passed in M.A.C.P. No.175 of 2016, by the learned Member of the Motor Accident Claims Tribunal, Court No.10, Ahmednagar,

on 22-06-2018, is hereby set aside and modified to the extent of quantum as follows :-

" Opponents no.01 and 02 do pay jointly and severally compensation of Rs. 15,82,000/- (Rupees fifteen lacs eighty two thousand only) to the applicants no.01 and 02, together with interest at the rate of 8 % per annum from the date of the petition till actual realization of entire amount."

(c) Rest of the award is kept as it is.

(d) The amount already deposited / paid, if any, be adjusted towards this order. If it is found that the amount deposited is excess, it be refunded to the Insurance Company.

(e) Present respondents no.01 and 02 - original claimants are permitted to withdraw the amount as per the modified award.

(Smt. Vibha Kankanwadi)
JUDGE

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