

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.735 OF 2007

1] Smt.Surekha @ Sangita Chandrakant Mule,
age 27 yrs., occu.household,

2] Shubhangi d/o Chandrakant Mule,
age 10 yrs., occu.student,

3] Hrushikesh s/o Chandrakant Mule,
age 6 yrs., occu.nil,

4] Omkar s/o Chandrakant Mule,
age 3 yrs., occu.nil,

Appellant nos.2 to 4 are minors u/g of their
natural mother i.e. appellant no.1.

All r/o Old Cotton Market, Latur
Tq. & Dist.Latur.

...Appellants...
(org.claimants)

VERSUS

1] Vaijinath s/o Venkatrao Karnure,
age major occu.driver.

2] Manikappa s/o Dagaduappa Sagare,
since deceased, through his L.Rs. -

2-A] Sundarbai w/o Manikappa Sagare,
age 76 yrs., occu.household,

2-B] Shiva s/o Manikappa Sagare,
age 51 yrs., occu.business,

2-C] Dagadu s/o Manikappa Sagare,
age 44 yrs., occu.business,

All r/o Lad Galli, in front of Kazi Police Station,
Latur. Tq. & Dist.Latur.

3] National Insurance Company Ltd.,

Latur Branch, through its Branch Manager,
Latur. Dist.Latur.

4] Rajkumar s/o Bankatrao Karnure,
age major, occu.business,
r/o Bhagwatwadi Tq. Umarga Dist.Osmanabad.

5] The Oriental Insurance Company Ltd.,
Latur. Through its Branch Manager, Latur.

...Respondents..

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Shri Chaitanya Deshpande h/f Shri C.R. Deshpande, Advocate for
appellants.

Appeal dismissed against respondent no.1 as per Registrar's order
dated 18.8.2009.

Shri Sachin Deshmukh, Advocate for L.Rs. of respondent no.2.

Shri A.V. Soman h/f Shri D.V. Soman, Advocate for respondent no.3.

Respondent no.4 served.

Shri M.K. Goyanka, Advocate for respondent no.5.

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CORAM: V.L. ACHLIYA, J.

JUDGMENT RESERVED ON 23.01.2020

JUDGMENT PRONOUNCED ON 24.07.2020

JUDGMENT :

1] Being aggrieved by the judgment and award dated
9.3.2007 passed by the Motor Accident Claims Tribunal, Latur, in
Motor Accident Claim Petition No.9/2004, the appellants – claimants
have preferred this appeal seeking enhancement of compensation.

2] Heard learned counsel appearing for the appellants and
respondents. Perused the record and proceedings.

3] Before adverting to deal with the submissions, it is useful

to refer few facts leading to filing of the claim petition by the claimants. For the sake of brevity and convenience, the parties are referred as they are referred in the judgment of the Tribunal.

4] The claimants have filed petition u/s 166 of the Motor Vehicles Act seeking compensation of Rs.10,00,000/- making the respondent nos.1 to 5 jointly and severally liable to pay compensation with interest at the rate of 18% p.a. from the date of petition till its realization. The claimants have approached with a case that on 10.8.2003, the deceased Chandrakant - husband of claimant no.1 and father of claimant nos.2 to 4, was proceeding on motorcycle bearing registration No.MH-24-3341 as a pillion rider. The respondent no.2/3 - Dagadu Manikappa Sagare was driving the motorcycle. While they were proceeding towards Utka village Tq.Ausa Dist.Latur, the offending vehicle i.e. Indica Car bearing registration No.MH-12-AF-5825 driven by the respondent no.1 came from opposite side and gave dash to motorcycle. The respondent no.1 was driving the offending car in an excessive and unmanageable speed. He had no control over the wheel of the Car. Due to the dash given by the said Car to the motorcycle, the deceased Chandrakant as well as Dagadu sustained injuries to the vital part. The deceased Chandrakant succumbed to injuries on the spot. The claimants have worked out the compensation to be

payable as Rs.23,14,000/- and restricted the claim for the purpose of filing claim petition and valuation at Rs.10,00,000/-. The claimants have claimed that the deceased Chandrakant was running the business of retail sale of watches and other electronic articles from his shop. He had employed two persons in his shop for the purpose of sale and repair of watches. His monthly income was more than Rs.10,000/-. He was saving Rs.200/- per day for his children by depositing the amount in Pigmy deposit scheme. The claimants were fully dependent upon the income of the deceased. The claimants have claimed that out of Rs.10,000/-, the deceased was spending Rs.8,000/- per month for the maintenance of the claimants. The deceased was 33 years of age. He was hale and hearty. He would have survived atleast for 36 years. On account of pecuniary loss, the claimants have worked out the compensation payable as Rs.20,64,000/- and further made claim of Rs.2,50,000/- towards non-pecuniary damages. Although the claimants have worked out the compensation payable at Rs.23,14,000/-, but they restricted their claim to the tune of Rs.10,00,000/- for the purpose of filing of claim petition and payment of Court fees. At the time of accident, the offending vehicle i.e. the Indica Car was owned by the respondent no.4 and insured with respondent no.3. The motorcycle involved in the accident was owned by respondent no.2 and insured

with respondent no.3. The respondent no.1 was claimed to be driving the offending vehicle i.e. the Indica Car bearing registration No. MH-12-AF-5825. On account of accidental death, the claimants have claimed that all the respondents be made jointly and severally liable to pay the compensation to the claimants.

5] The respondent no.1 contested the claim petition and denied that the accident occurred due to rash and negligent driving and fault on his part. It is claimed that the person driving the motorcycle was responsible for causing the accident. The respondent nos.3 & 4 disputed their liability to pay the compensation. The respondent no.3 has taken the plea that there was no fault on the part of person driving the motorcycle. He claimed that accident occurred due to sole negligence and fault on the part of driver of offending vehicle i.e. the Indica Car. The respondent no.5 - insurance company denied its liability to pay the compensation. The respondent no.5 claimed that the driver of the offending vehicle was not having valid and effective driving license to drive the vehicle insured with respondent no.5 and in that view, the insurance company is not liable to indemnify the respondent no.4 i.e. the owner of the Car.

6] In order to prove their case, the claimants have examined Suresh @ Sangita - the claimant no.1 - wife of the

deceased. She has tendered and proved certain documents in evidence. None of the respondents examined themselves nor examined any witness in support of their defence. By the impugned judgment and award, the Tribunal has partly allowed the petition and awarded the compensation of Rs.3,72,000/- inclusive of No Fault Liability with future interest at the rate of 7.5% p.a. making the respondent nos.1 to 5 jointly and severally liable to pay the compensation. Being aggrieved by the quantum of compensation awarded by the Tribunal, the appellants - claimants have preferred this appeal seeking enhancement of compensation.

7] In brief, it is the contention of learned counsel for the appellants that the compensation awarded by the Tribunal is not in tune with the evidence adduced in the case. The Tribunal has failed to appreciate the evidence in its proper perspective. It is contended that the Tribunal ought to have considered the income of deceased as Rs.10,000/- per month and awarded the compensation as claimed in the petition. It is submitted that in the light of oral and documentary evidence, the Tribunal should have accepted the case of the claimants that the deceased was carrying the business of sale and repair of watches and electronic articles and his monthly earning was not less than Rs.10,000/-. The deceased had employed two persons in his shop and paying them Rs.100/- per day is more

than sufficient to infer that the earning of deceased was such to pay the wages of persons employed in the shop. The Tribunal ought to have believed the evidence of the claimants' witness examined in the case to prove the age, occupation and income of the deceased. By referring the decision in the case of *National Insurance Company Limited V/s Pranay Sethi and others* reported at **(2017) 16 SCC 680**, the learned counsel submitted that the Tribunal has erred in assessing the compensation. The Tribunal has not considered the future prospects of deceased while assessing compensation. Considering the dependency of the deceased being four persons, the Tribunal should not have made the deduction to the extent of 1/3rd towards personal expenses of deceased. The Tribunal also erred in awarding meagre sum of Rs.12,000/- towards non-pecuniary damages under the conventional head such as funeral expenses, loss of consortium, loss of estate etc. It is submitted that the compensation as assessed by the Tribunal is not in accordance with the settled position in law. The learned counsel submits that in the facts and circumstances of the case, the Tribunal ought to have awarded the compensation of Rs.10,00,000/- as claimed in the petition.

8] On the other hand, the learned counsel appearing for the respondents supported the judgment and award passed by the

Tribunal. It is submitted that the claimants have utterly failed to produce evidence to prove that the deceased was doing business and earning Rs.10,000/- per month. It is submitted that neither the copies of the income tax returns nor the books of accounts are produced in evidence to prove the occupation and income of deceased.

9] I have carefully considered the submissions advanced in the light of rival pleadings, oral and documentary evidence adduced in the case. Since the challenge raised in the appeal is confined to quantum of compensation awarded, it is not necessary to deal with other aspects of the matter including rash and negligent driving and liability of the respondents to pay the compensation. The question posed for consideration in appeal is confined to assessment of compensation made by the Tribunal.

10] As discussed, the claimants have approached with a case that the deceased Chandrakant was aged 33 years of age and carrying business of sale and repair of watches and various electronic items from the shop hired on rent. It is claimed that the deceased was earning not less than Rs.10,000/- per month. The claimant no.1 is the widow of the deceased, who was about 29 years of age at the time of death of deceased. The claimant nos.2 & 3 are daughters of the deceased, who were aged 7 and 3 years at

the time of accidental death of their father. The claimant no.4 is the son of the deceased who was aged one & half years at the time of accident. Although the claimants have computed the claim to the tune of Rs.23,14 000/-, they restricted the claim to Rs.10,00,000/-.

11] In order to prove their case, the claimants have examined Surekha @ Sangita - claimant no.1 - wife of the deceased Chandrakant. She has deposed that her husband was 33 years of age and running business of sale and repair of watches at Gawali Complex, Latur. Her husband had employed two persons to carry business and they were paid Rs.100/- per day. She has deposed that her deceased husband was earning Rs.10,000/- per month from said business. She further deposed that her husband was the sole bread earner in their family. At the time of accident, her children were studying in Ist Standard and K.G. respectively. In support of the case that the deceased was carrying the business of sale and repair of watches, the claimants have produced on record the license issued under the provisions of the Bombay Shops and Establishments Act, 1948 in the name of Chandrakant Shankarrao Mule - the deceased. The claimants have further produced the documents such as birth certificate of deceased, premium receipt of insurance policy and copy of policy at Exhibits 58, 59 and 60 respectively.

12] If we consider the cross-examination of the witness for the claimants, then it appears that the respondents tried to establish that after the death of deceased, the wife of deceased is carrying the same business and deriving same income from the business of deceased. In cross-examination, it is brought that the license of shop was not canceled after the death of deceased and deceased had taken the shop on monthly rent of Rs.4,000/- and paid Rs.50,000/- as deposit to the landlord. If we consider the overall cross-examination, then there is no challenge to testimony of PW1 that the deceased was carrying the business of sale and repair of watches and he had a shop located in Gawali Complex at Latur.

13] In the case of *National Insurance Company Limited V/s Pranay Sethi and others* (supra), the Constitutional Bench of the Hon'ble Apex Court has laid down the following broad principles to be borne in mind while determining the compensation:-

“59.1. The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma*, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

59.2. As *Rajesh* has not taken note of the decision in

Reshma Kumari, which was delivered at earlier point of time, the decision in *Rajesh* is not a binding precedent.

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

14] In my view, the approach of the Tribunal to assess the compensation by applying analogy of wages earned by agricultural labours employed on daily wages was improper. There is no basis for the Tribunal to presume and assess the monthly income of the deceased as Rs.3,000/- per month for the purpose of assessment of compensation. In fact, the Tribunal has overlooked the vital evidence brought through cross-examination of PW1 that the deceased was running the shop taken on monthly rent of Rs.4,000/- and paid Rs.50,000/- as deposit to landlord. If the person had ability to pay monthly rent of Rs.4,000/- per month to landlord, then by no analogy, the income of such a person could have been inferred as Rs.3,000/- per month. Similarly, the deduction made to the extent of 1/3rd towards personal expenses is not sustainable in view of the deceased being a married person and survived with four dependents, which includes three minor children. So also the award of compensation of Rs.12,000/- towards non-pecuniary damages on account of accidental death of the deceased who left behind young aged widow and three minor children in the age group

of 7 to one & half years, is on lower side. Similarly, the Tribunal failed to consider the future prospects of deceased and failed to add income to existing income of deceased. In that view, the compensation awarded by the Tribunal requires to be re-assessed.

15] The accident had occurred on 10.8.2003. The claimants have claimed that at the time of accidental death, the deceased was 33 years of age. In order to prove the age of the deceased, the claimants have tendered in evidence the birth certificate (Exh.58), premium receipt issued by Life Insurance Corporation of India (Exh.59) and copy of Insurance Policy issued by Life Insurance Corporation of India (Exh.60). All these documents mention the date of birth of the deceased as 10.9.1970. Thus, considering the date of birth of the deceased on the relevant date of accident i.e. 10.9.1970, the deceased proved to be aged 33 years. In that view, considering the decision in the case of *Sarla Varma (Smt.) and others Vs. Delhi Transport Corporation and another* reported at **(2009) 6 SCC 121**, the multiplier of 16 is to be applied in the instant case as applicable to the deceased victim in the age group of 31 to 35 years.

16] The claimants have claimed that the deceased was running the shop of sale and repair of watches as well as sale of electronic goods and earning Rs.10,000/- per month. In support of

occupation and income of the deceased, the claimants have examined Surekha @ Sangita – wife of the deceased as PW1. She has deposed as per the case of the claimants. In order to substantiate the oral testimony, the claimants have produced the license issued under the provisions of the Bombay Shops and Establishment Act, 1948 by the Municipal Corporation, Latur, in the name of the deceased. The license is produced at Exhibit 15. It reflects that the license under the provisions of the Bombay Shops and Establishment Act was issued in the name of Mule Watch Maker run by the deceased Chandrakant Shankarrao Mule. In the license, the nature of business is shown as sale and repair of watches and the location of shop is shown as Kapad Lane, Gawali Complex, Latur. The license was lastly renewed on 21.10.2002 for the year 2003. Thus, the oral testimony of PW1 coupled with license issued under the provisions of the Bombay Shops and Establishment Act duly proves the case of the claimants that the deceased was running the shop of sale and repair of watches from his business premises located in Gawali Complex, Latur.

17] If we consider the cross-examination of PW1, then the respondents have not disputed that the deceased was a businessman by profession and carrying the business of sale and repair of watches at Latur. The oral testimony of PW1 on the issue

of occupation of deceased remained intact. On the contrary, the same has been strengthened through the material brought through cross-examination of PW1. By way of cross-examination of PW1, it has been brought on record that the deceased was running the business from the shop premises secured on monthly rent of Rs.4,000/- and paid Rs.50,000/- as deposit. By way of cross-examination, the respondent no.3 has tried to establish that the source of income even after death of deceased remained intact and no loss of income resulted to claimants on account of accidental death of the deceased as license of shop was not got canceled by the claimants. However, there is no evidence to prove that after the death of deceased, the claimants have continued to run the business and deriving same income. PW1 has denied the suggestion given in that respect. No evidence is adduced by respondents in this regard. In that view, the finding of the Tribunal to discard the oral and documentary evidence adduced by the claimants is not sustainable in law. Only for the reason that the claimants have not produced the books of accounts, income tax returns and payment to sales tax department, is not sufficient to hold that claimants have failed to prove the occupation and income of the deceased. It is quite settled position in law that the Motor Vehicles Act is a beneficial legislation designed in a manner which

relieves victims from ensuring strict compliance, which is otherwise applicable to suits and other proceedings.

18] If we consider the overall pleadings and evidence adduced in the case, then the fact regarding age and occupation of the deceased is not seriously in dispute. Disputed question falls for consideration confines to income the deceased was earning by running business of sale and repair of watches. In assessing the compensation, the Court is required to make guesswork. The claimants are the widow and minor children of the deceased. For want of production of books of accounts, no inference can be drawn that the deceased was simply a watch repairer. If we consider the cross-examination of PW1, then it is nowhere brought on record to show that though the deceased was maintaining the books of accounts and paying the sales tax. It is nowhere case of respondents that though the documentary evidence was available, still same has been withheld by the claimants.

19] The approach of the Tribunal to assess the income by making comparison of deceased with daily wages earned by the agricultural labourer was totally incorrect and perverse. The Tribunal has assessed the income of the deceased as Rs.100/- per day. If the deceased was paying monthly rent of Rs.4,000/- and paid Rs.50,000/- as deposit to landlord of the shop taken on rent,

then by no stretch of imagination, the income of the deceased could have been assessed by the Tribunal @ Rs.100/- per day.

20] Thus, considering the overall facts of the case and evidence on record and particularly the payment of rent of Rs.4,000/- per month the deceased was paying to landlord of the shop taken on rent for carrying business, it can safely be inferred that the income of the deceased may not be less than Rs.10,000/- per month. Besides paying rent of Rs.4,000/- per month, the deceased must be making expenditure towards payment of electricity charges etc. to run the business. The ability of the deceased to employ two servants in the shop establishes that the deceased had sufficient income to meet the expenditure to run the shop as well as maintain his family consisting of four persons. In that view, the case of the claimants that the deceased was earning Rs.10,000/- per month ought to have been accepted by the Tribunal.

21] Considering the monthly rent of Rs.4,000/- and other expenses the deceased was making to run the business, it can safely be inferred that the deceased was saving at least Rs.5,000/- per month to maintain his family. Considering the dependency of the deceased as that of four persons, the amount to the extent of 1/4th is required to be deducted from Rs.5,000/- towards personal expenses of the deceased. Since the deceased was self-employed

person in terms of the decision in the case of *National Insurance Company Limited V/s Pranay Sethi and others* (supra), the amount to the extent of 40% of the existing income of the deceased is to be added towards future prospects and increase in income of deceased in future. In that view, the yearly income of the deceased for the purpose of assessment of compensation worked out as Rs.84,000/- ($\text{Rs.60,000} + \text{Rs.24,000} = \text{Rs.84,000}$). Out of Rs.84,000/-, amount to the extent of 1/4th i.e. Rs.21,000/- is to be deducted from said amount towards personal expenses of deceased. Accordingly, the yearly loss of income to the claimants on account of accidental death of deceased is worked out as Rs.63,000/- [$84,000 - 21,000 = 63,000$]. By applying the multiplier of 16 as applicable to victims in the age group of 31 to 35 years, as the deceased was aged 33 years, the monetary loss of income on account of accidental death of deceased worked out as Rs.10,08,000/- [$63000 \times 16 = 10,08,000$]. At the time of accidental death of the deceased, the claimant no.1 - wife of the deceased was aged 29 years. The deceased survived with three minor children in the age group of 3 to 10 years. In that view, under the conventional head such as funeral expenses, loss of consortium, loss of company, loss of estate etc., the lump-sum amount of Rs.50,000/- deserves to be awarded to the claimants.

22] In view of the discussion made above, the just and proper compensation to be payable to the claimants is worked out as under:-

Sr. No.	Heads	Compensation awarded
1.	Monthly Income of deceased	Rs.5,000/-
2.	Annual Income of deceased (5000 X 12)	Rs.60,000/-
3.	Addition towards future prospects (i.e. 40% of 60,000)	Rs.24,000/-
4.	Yearly loss of income to be considered for assessment (60000+ 24000)	Rs.84,000/-
5.	Deduction towards personal expenses of deceased (i.e. 1/4th) (84000-21000)	Rs.63,000/-
6.	Multiplier to be applied	16
7.	Total monetary loss [63000 x 16]	Rs.10,08,000/-
8.	Compensation under conventional heads such as loss of love and affection, consortium, funeral expenses and loss of estate etc.	Rs.50,000/-
9.	Total compensation to be awarded	Rs.10,58,000/-

23] Thus, the just and proper compensation to be payable to the claimants on account of accidental death deserves to be enhanced from Rs.3,72,000/- to Rs.10,58,000/- (inclusive of No Fault Liability) with future interest at the rate of 6% p.a. Accordingly, the following order is passed.

ORDER

- A] The appeal is allowed with proportionate costs.
- B] The compensation awarded by the Tribunal is

enhanced from Rs.3,72,000/- to Rs.10,58,000/- (inclusive of No Fault Liability).

C] The respondent nos.1 to 5 are directed to jointly and severally pay the compensation of Rs.10,58,000/- to the claimants with future interest at the rate of 6% p.a. from the date of petition till its realization.

D] The amount of compensation if any paid in terms of award passed by the Tribunal, then same shall be adjusted towards the compensation to be payable in terms of enhanced compensation.

E] After adjusting the amount already paid, the balance amount be paid with interest at the rate of 6% p.a. from the date of petition till its realization, within twelve weeks from the date of judgment and order passed by this Court.

F] The enhanced amount of compensation shall be apportioned and paid to the claimant nos.1 to 4 in equal proportion.

G] The amount falling to the share of minors be kept in fixed deposit till he / she attains the age of majority.

H] The appellants shall pay the additional Court fees to be payable in terms of compensation enhanced and

awarded within four weeks from the date of receipt of modified award.

I] The award be drawn in terms of order in appeal.

J] Appeal is disposed of in above terms.

(V.L. ACHLIYA, J.)