IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL No. 966 OF 2005

01. Balu Alias Balasaheb (Santosh)
S/o Vithalrao Patange,
Age. 20 Years, Minor,
Occu. Agriculture.

02. Eknath S/o. Vithalrao Patange,
Age. 18 Years. Occu. Education.
Minor.

03. Vithal S/o Panditrao patange,
Age.42 Years, Occu. Agriculture.

R/o. Village: Kandli (Akhada Balapur),
Tq. Kalamnuri, Dist. Hingoli. ...**APPELLANTS**...

VERSUS

01. Dr. Uttam S/o. Ganpatrao Pensalwar,
Age. Major, Occu. Business,
R/o. Dr. Ambedkar Chowk, Latur Road,
Nanded.
Deceased through L.Rs.:-

1-a) Shyam S/o Uttmarao Pensalwar
Age. Major, Occu. Business
R/o. Dr. Ambedkar Chowk,
Latur Road, Nanded.

1-b) Vishal S/o Uttamrao Pensalwar
Age. Major, Occu. Business,
R/o. As above.

1-c) Pandurang S/o Uttamrao Pensalwar
Age. Major, Occu. Business,
R/o. As above.

02. Akhtar Khan Pathan
S/o. Taherkhan Pathan,
Age. Major, Occu. Business,
R/o. Peerburhannagar, Nanded.
(Appeal dismissed against this respondent as per
Court's order dated 20-04-2009)

03. The Manager, United India
Insurance Company Limited,
Branch Office, Nanded. ….**RESPONDENTS**…

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Advocate for Appellants : Smt. Reddy Ranjana D.
Respondent Nos.1a to 1c though served are absent.
Appeal dismissed as against respondent no. 2 as per Court order dated 20.4.2009.
Advocate for Respondent no.3: Shri A. B. Gatne

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FIRST APPEAL No. 967 OF 2005

01. Nilkanth S/o. Pundlikrao Patange
Age. 28 Years, Occu. Agriculture.
R/o. Kandli (Akhada Balapur),
Tq. Kalamnuri, Dist. Hingoli. …..**APPELLANT**...

VERSUS

01. Dr. Uttam S/o. Ganpatrao Pensalwar,
Age. Major, Occu. Business,
R/o. Dr. Ambedkar Chowk, Latur Road,
Nanded.
Deceased through L.Rs.:-

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Age. Major, Occu. Business
R/o. Dr. Ambedkar Chowk,
Latur Road, Nanded.

1-b) Vishal S/o Uttamrao Pensalwar
Age. Major, Occu. Business,
R/o. As above.

1-c) Pandurang S/o Uttamrao Pensalwar
Age. Major, Occu. Business,
R/o. As above.

02. Akhtar Khan Pathan
S/o. Taherkhan Pathan,
Age. Major, Occu. Business,
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(Appeal dismissed against respondent no.2 as per
Court's order dated 20-04-2009)

03. The Manager, United India
Insurance Company Limited,
Branch Office, Nanded. …..**RESPONDENTS**...
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Advocate for Appellant : Smt. Reddy Ranjana D.
Respondent Nos. 1a to 1c though served are absent.
Appeal dismissed against respondent no.2 vide Court order dated 20.4.2009.
Advocate for respondent no.3: Shri S. V. Kulkarni

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FIRST APPEAL NO.968 OF 2005

01. Master Satish S/o Bhagwan Patange,
Age. 15 Years, Minor,
Occu. Education.

02. Kum. Shubhangi D/o Bhagwan Patange,
Age. 15 Years. Occu. Education.
Minor.

03. Panditrao S/o Shankiarrao Patange,
Age. 60 Years, Occu. Agriculture,
(Died through his Lrs. Appellant No. 1 & 2 are
already on record)
All R/o. Village: Kandli (Akhada Balapur),
Tq. Kalamnuri, Dist. Hingoli. …..**APPELLANTS**...

<u>VERSUS</u>

01. Dr. Uttam S/o. Ganpatrao Pensalwar,
Age. Major, Occu. Business,
R/o. Dr. Ambedkar Chowk, Latur Road,
Nanded.
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Latur Road, Nanded.

1-b) Vishal S/o Uttamrao Pensalwar
Age. Major, Occu. Business,
R/o. As above.

1-c) Pandurang S/o Uttamrao Pensalwar
Age. Major, Occu. Business,
R/o. As above.

02. Akhtar Khan Pathan
S/o. Taherkhan Pathan,
Age. Major, Occu. Business,
R/o. Peerburhannagar, Nanded.
(Appeal dismissed against respondent no.2 as per Court order dated 20-04-2009)

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Insurance Company Limited,
Branch Office, Nanded. ...**RESPONDENTS**...

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Advocate for Appellants : Smt. Reddy Ranjana D.
Respondent Nos. 1a to 1c though served are absent.
Appeal dismissed against respondent no.2 vide Court order dated 20.4.2009.
Advocate for respondent no.3: Shri S. V. Kulkarni

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CORAM: V.L. ACHLIYA, J.

DATE: 20.01.2020

JUDGMENT :

1] All these appeals challenge the common judgment and award dated 5.5.2005 passed in Motor Accident Claim Petition Nos.318/2002; 319/2002; 320/2002; 321/2002 and 322/2002 passed by the Motor Accident Claims Tribunal, Nanded. Since the challenge raised in appeals is confined to quantum of compensation awarded by the Tribunal and arising out of same judgment and award, same are heard together.

2] Heard learned counsel for the appellants – claimants and respondent no.3 – insurance company. Perused the record and proceedings.

3] Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of appeals by the appellants – claimants. The appellants herein preferred Motor Accident Claim Petitions u/s 166 of the Motor Vehicles Act seeking compensation of Rs.3,00,000/- each. They have approached with a case that on 24.5.2002, deceased persons namely Zumbarlal Jaiswal; Shantabai w/o Pundlikrao Patange; Mangalabai w/o Vithalrao Patange; Savita w/o Bhagwan Patange; Bhagwan s/o Panditrao Patange and few others were proceeding in auto-rickshaw bearing registration No.MH-09/D-1259 from Balapur to Kandli. Deceased Zumbarlal Jaiswal was driving said auto-rickshaw. When said auto-rickshaw reached near Bij Gunan Kendra, Akhada Balapur, one truck bearing registration No.MWP-7041 which was driven by Akhtar Khan Pathan – respondent no.2, which was owned by Uttam Ganpatrao Pensalwar – respondent no.1 and insured with respondent no.3 – insurance company, came from opposite direction. The respondent no.2 was driving said truck in an excessive and unmanageable speed, gave dash to auto-rickshaw. The impact of the dash given by the truck was so severe that it resulted into causing accidental death of Zumbarlal Jaiswal – auto-rickshaw driver; Shantabai (mother of appellant in First Appeal No.967/2005); Mangalabai – wife of Vithalrao Patange (mother of appellant nos.1 & 2 and wife of appellant no.3 in First Appeal No.966/2005) and Savita w/o Bhagwan Patange (mother of appellant nos.1 & 2 in First Appeal No.968/2005) who were traveling in said auto-rickshaw as passengers. The appellants – claimants have approached with a case that the said accident and consequential deaths were caused due to rash and negligent driving and sole negligence on the part of truck driver. On the basis of complaint lodged, the Police have registered offence u/s 3-4-A, 279, 337 and 336 of the Indian Penal Code vide Crime No.53/2002 against respondent no.2 with Police Station, Balapur.

4] The respondent no.1 resisted the claim petitions and denied his liability with contention that prior to accident, he had sold said truck to respondent no.2. The respondent no.2 though served remained absent. The case proceeded *ex-parte* against him. The respondent no.3 – insurance company resisted the claim petitions filed by appellants with contentions that the claims made are excessive. It is contended that the accident occurred due to sole negligence on the part of driver of auto-rickshaw and respondent no.3 is not liable to pay compensation.

5] The Tribunal has partly allowed the claim petitions filed by appellants and awarded the compensation as under:-

Sr.No.	MACP number	Amount of compensation claimed Rs.	Compensation awarded by Tribunal Rs.
1]	319/2002	3,00,000	146000
2]	320/2002	3,00,000	182000
3]	321/2002	3,00,000	162000

6] Being aggrieved by the quantum of compensation awarded, the claimants in MACP No.320/2002 preferred First Appeal No.966/2005 seeking enhancement of compensation from Rs.1,82,000/- to Rs.3,00,000/-. The claimant in MACP No.319/2002 preferred First Appeal No.967/2005 seeking enhancement of compensation from Rs.1,46,000/- to Rs.3,00,000/-. The claimants in MACP No.321/2002 have preferred First Appeal No.968/2005 seeking enhancement of compensation from Rs.1,62,000/- to Rs.3,00,000/-.

7] Learned counsel for the appellants contended that the compensation awarded by the Tribunal is not in accordance with law. The deceased persons were earning Rs.5,000/- per month. However, the Tribunal has assessed the compensation by notionally assessing their monthly income as Rs.1500/- per month. It is submitted that in the facts and circumstances of the case and evidence adduced, the Tribunal ought to have considered the income of the deceased as Rs.5,000/- per month. It is further submitted that under the head of non-pecuniary loss, the Tribunal has only awarded Rs.2,000/- as funeral expenses. No amount has been awarded on account of loss of parental care, love and affection, loss of estate. It is contended that in the facts and circumstances of the case, the Tribunal ought to have awarded the compensation of Rs.3,00,000/- in each of the claim petitions. In support of the submission, the learned counsel for appellants has referred and relied upon the decision of the Apex Court in the case of *Arun Kumar Agrawal & another v. National Insurance Co. Ltd. & others* reported at **(2010) 9 SCC 218**.

8] On the other hand, learned counsel representing the insurance companies support the judgment and award passed by the Tribunal. By referring overall facts of individual case and evidence adduced in each of the case, the learned counsel contended that except the oral testimony that the deceased persons were helping their respective families in cultivation of the land, no other evidence has been adduced to accept the case of the appellants that the deceased persons were contributing Rs.5,000/-

per month to their respective families. It is submitted that the appeals preferred are devoid of merit and liable to be dismissed.

9] I have carefully considered the submissions advanced in the light of rival pleadings and the evidence adduced in each case and perused the record and proceedings.

10] **FIRST APPEAL NO.966/2005** :
(arising out of award passed in MACP No.320/2002)

[a] In MACP No.320/2002, as against the claim of Rs.3,00,000/- made by the claimants, the Tribunal has awarded Rs.1,82,000/- as compensation to be payable. The Tribunal has awarded Rs.1,80,000/- towards pecuniary loss sustained by the claimants and further awarded Rs.2,000/- as funeral expenses.

[b] I am of the view that the compensation assessed by the Tribunal on account of pecuniary loss is in tune with the rival pleadings, evidence adduced in the case and settled position in law. The claimants have claimed that the deceased Mangalabai was aged 35 years and earning Rs.5,000/- per month by doing agricultural work. The Tribunal has assessed the compensation by considering the age of the deceased as 42 years based upon the age reflected in the *post-mortem* report in absence of evidence on the part of the claimants to prove the age of the deceased as 35 years. In absence of any cogent, convincing evidence adduced to

prove monthly income of the deceased as Rs.5,000/-, the Tribunal has considered notional income of deceased as Rs.1500/- per month. Applying the multiplier of 15 applicable to victims in the age group of 41 to 45 years, the Tribunal has assessed the pecuniary loss as Rs.1,80,000/- by considering the notional income of deceased as Rs.1500/- per month (i.e. Rs.18,000/- per year) and deducting 1/3rd towards personal expenses. The Tribunal has further awarded the sum of Rs.2,000/- towards funeral expenses. Thus, the Tribunal has awarded total compensation of Rs.1,82,000/-.

[c] In support of claim, the claimant no.3 has stepped into the witness box and deposed that his family owns 10 Acres of land. Out of which 4 Acres of land standing in the name of deceased Mangalabai. He deposed that the deceased used to work in the field. During the life time of the deceased, they were deriving Rs.50,000/- per year by cultivating 10 Acres of land. After the death of deceased Mangalabai, their yearly income reduced to Rs.10,000/- to Rs.15,000/- per year. The Tribunal has refused to act upon the oral evidence as to income of deceased as well as loss of income adduced by claimants as the Tribunal has formed the view that the source of income of claimants remained to be intact after the death of deceased. Considering the fact that the deceased was assisting in cultivation and supervision of the land, the Tribunal has

notionally assessed the loss of income on account of death of deceased as Rs.1500/- per month. In my view, the reasons and findings recorded by the Tribunal are fully in consonance with the evidence on record. The Tribunal is fully justified in assessing the notional income of the deceased as Rs.1500/- per month in absence of any convincing evidence produced by the claimants to prove the income of deceased as Rs.5,000/- per month. The accidental death of deceased occurred in the year 2002. Considering the prevailing minimum wages payable to the agricultural labourer in the year 2002, the notional income of deceased has been rightly considered as Rs.1500/- per month for the purpose of assessing the pecuniary loss. In that view, the reasons and findings recorded by the Tribunal as to assessment of compensation under the head of pecuniary loss deserves no interference.

[d] So far as the assessment of compensation under the non-pecuniary loss, I am of the view that the amount of Rs.2,000/- awarded is too meager and deserves to be enhanced. The Tribunal has not awarded any compensation on account of loss of company, loss of estate and other conventional heads. In the case of *National Insurance Company Ltd. v. Pranay Sethi* reported at **(2017) 16 SCC 680**, the Apex Court has laid down the broad guidelines as to assessment of pecuniary and non-pecuniary losses. Fixed sum of

Rs.70,000/- has been directed to be paid towards non-pecuniary losses in case of death with enhancement of 10% after every three years. Since the accident and death in question has occurred in the year 2002, I am of the view in the facts and circumstances of the case, the amount awarded under the conventional head deserves to be enhanced from Rs.2,000/- to Rs.30,000/-. Accordingly, First Appeal No.966/2005 is partly allowed. The compensation of Rs.1,82,000/- awarded by the Tribunal is re-assessed and enhanced to Rs.2,10,000/-.

11] **FIRST APPEAL NO.967/2005** :
(arising out of award passed in MACP No.319/2002)

[a] In this appeal, the claimant has claimed enhancement of compensation from Rs.1,46,000/- to Rs.3,00,000/- with contention that the Tribunal has not properly assessed the compensation. It is the contention of appellant that the Tribunal has erred in considering the age of the deceased as 45 years and applying the multiplier of 12 & assessing the compensation by treating the notional income of deceased as Rs.1500/- per month.

[b] The Tribunal has awarded the compensation of Rs.1,46,000/- as against the claim of Rs.3,00,000/-. The amount of Rs.1,44,000/- has been assessed as compensation under pecuniary loss and Rs.2,000/- has been awarded towards funeral expenses. In

absence of exact proof of age of the deceased by claimants, the Tribunal has accepted the age of the deceased as shown in the *post-mortem* report as basis for selection of multiplier. The Tribunal has applied the multiplier of 12 in assessing compensation. In absence of any cogent and convincing evidence as to income of deceased, the Tribunal has considered the notional income of the deceased as Rs.1500/- per month.

[c] The claimant has approached with a case that the deceased Shantabai was working as Anganwadi Assistant. She was also cultivating 0.52 Acres of land, which stood in her name. By working as Anganwadi Assistant and cultivating the land, the deceased was earning Rs.5,000/- per month. It is further claimed that the deceased was 41 years of age. In support of his case, the claimant has produced the certificate showing that the deceased was receiving Rs.869/- as monthly honorarium as Anganwadi Assistant and further produced 7/12 extract showing that the land admeasuring 0.52 Acres was owned by deceased.

[d] In my view, the assessment of compensation made by the Tribunal requires re-determination as same is not in consonance witwh rival pleadings, evidence and settled position of law. In absence of proof of exact age of deceased, the Tribunal was justified in relying upon the age of deceased mentioned in *post-mortem*

report as probable age of deceased. Thus, considering the age of the deceased as 45 years as reflected in the *post-mortem* report, the Tribunal ought to have applied the multiplier of 14 as applicable for victims in the age group of 41 to 45 years as per guidelines laid down in the case of *National Insurance Company Ltd. v. Pranay Sethi* (supra). In absence of satisfactory evidence as to exact income of deceased being proved as Rs.5,000/- per month, the Tribunal was justified in assessing the compensation by notionally taking income of the deceased as Rs.1500/- per month and Rs.18,000/- per year. After making the deduction of 1/3rd towards personal expenses of deceased, the yearly loss of income worked out as Rs.12,000 (i.e. 18,000 – 6-000 = 12,000). Thus, the pecuniary loss caused to claimant on account of accidental death of deceased worked out as Rs.1,68,000/- (i.e. 12,000 x 14 = 1,68,000). Thus, under the head of pecuniary loss, the appellant – claimant is entitled to receive Rs.1,68,000/-. Similarly, the compensation awarded under the conventional head deserves to be enhanced. The Tribunal has awarded Rs.2,000/- only towards funeral expenses under the non-pecuniary loss. In the case of *National Insurance Company Ltd. v. Pranay Sethi* reported at **(2017) 16 SCC 680**, the Apex Court has laid down the broad guidelines for assessment of compensation. Fixed compensation of Rs.70,000/-

has been directed to be paid towards the conventional head with enhancement of 10% after every three years. Since the accident and consequential death of deceased occurred in the year 2002, I am of the view in the facts and circumstances of the case, the amount awarded under the conventional head i.e. non-pecuniary loss deserves to be enhanced from Rs.2,000/- to Rs.20,000/-. Accordingly, First Appeal No.967/2005 is partly allowed. The compensation awarded by the Tribunal is re-assessed and enhanced from Rs.1,46,000/- to Rs.1,88,000/-.

12] **FIRST APPEAL NO.968/2005** :
(arising out of award passed in MACP No.321/2002)

[a] As against the claim of Rs.3,00,000/- made by the appellants – claimants, the Tribunal has awarded compensation of Rs.1,62,000/-. Being aggrieved, the appellants – claimants have preferred this appeal seeking enhancement of compensation mainly on the ground that the Tribunal has erred in considering the notional income of deceased as Rs.1500/- per month as against Rs.5,000/- per month claimed by the claimants. They have claimed that the deceased was 22 years of age. There was no proper selection of multiplier in determination of compensation.

[b] Perusal of the reasons and findings recorded by the Tribunal reflects that the Tribunal has notionally assessed the

income of the deceased as Rs.15,000/- per year. Further, the Tribunal has considered the age of the deceased as 33 years and applied multiplier of 16. The Tribunal has refused to accept the case of the claimants that at the time of accident, the deceased was 22 years old. The Tribunal has found the age of deceased claimed to be 22 years cannot be accepted in view of age of her children / claimants. The Tribunal has assessed the pecuniary loss at Rs.1,60,000/- by considering the loss of income as Rs.15,000/- per year after making deduction of 1/3rd towards personal expenses and further awarded Rs.2,000/- towards funeral expenses.

[c] On due consideration of the submissions, findings and evidence on record, I am of the view that the assessment of compensation made by the Tribunal is not in tune with the connected MACP Nos.319/2002 and 320/2002 decided by same judgment and award. While assessing the compensation in connected two cases arising out of same accident, the Tribunal has considered the notional income of the deceased as Rs.1500/- per month. There was no reason or any justification for the Tribunal to apply different yardstick in assessing notional income of the deceased in the case of the claimants. Considering the prevailing minimum wages in the year 2002, the Tribunal ought to have considered the notional income of the deceased as Rs.1500/- per

month as considered in the case of claimants in other two connected claim petitions arising out of same accident and decided together. As per the notification dated 23.3.2001 issued by the State Government providing for the minimum wages applicable for the year 2002, the minimum wages of Rs.47/- per day provided for payment to the persons employed in agricultural field as labourer. In that view, the notional income of the deceased ought to have been considered as Rs.1500/- per month by the Tribunal in awarding the compensation in absence of proof of exact income of deceased. Thus, considering the notional income of deceased as Rs.1500/- per month, the yearly income worked out as Rs.18,000/-. Thus, after making deduction of 1/3rd from yearly income of deceased towards personal expenses of deceased, the yearly loss of income works out as Rs.12,000/-. Considering the age of the deceased as 33 years and applying the multiplier as laid down in the case of *Sarla Verma & others v. Delhi Transport Corporation & another* reported at **(2009) 6 SCC 121**, for the age group in between 31 to 35 years, the multiplier of 16 deserves to be adopted in the instant case. Thus, amount to be payable towards pecuniary loss on account of accidental death of deceased Savita worked out as Rs.1,92,000/- (Rs.12,000/- x 16 = Rs.1,92,000/-). Similarly, the amount awarded towards non-pecuniary loss also deserves to be enhanced as the amount of Rs.2,000/- awarded by the Tribunal is not in tune with the settled position in law. In the case of *National Insurance Company Ltd. v. Pranay Sethi* reported at **(2017) 16 SCC 680**, the Apex Court has directed the *lump-sum* payment of Rs.70,000/- under the conventional head. Considering the age of claimants, their dependency, loss of parental care etc., under the conventional head, non-pecuniary loss deserves to be enhanced from Rs.2,000/- to Rs.70,000/- as claimant nos.1 & 2 were minors at the time of death of the deceased. They have lost their mother during their childhood. They were forced to take shelter with their grandfather. In that view, the compensation to be payable to appellants – claimants in First Appeal No.968/2005 deserves to be enhanced to Rs.2,62,000/-. Accordingly, the appeal is partly allowed. The compensation awarded by the Tribunal is re-assessed and enhanced from Rs.1,62,000/- to Rs.2,62,000/-.

13] In the result, the appeals preferred by the appellants deserve to be partly allowed. Accordingly, following order is passed:-

O R D E R

A] First Appeal No.966/2005 is partly allowed with proportionate costs. The award passed in MACP No.320/2002 is modified. The compensation awarded by the Tribunal is enhanced from Rs.1,82,000/- to Rs.2,10,000/-, inclusive of No Fault Liability with interest to be payable at the rate of 7% p.a. from the date of filing of petition till the date of realization of amount to be payable in terms of modified award.

B] First Appeal No.967/2005 is partly allowed with proportionate costs. The award passed in MACP No.319/2002 is modified. The compensation awarded by the Tribunal is enhanced from Rs.1,46,000/- to Rs.1,88,000/-, inclusive of No Fault Liability with interest to be payable at the rate of 7% p.a. from the date of filing of petition till the date of realization of amount to be payable in terms of modified award.

C] First Appeal No.968/2005 is partly allowed with proportionate costs. The award passed in MACP No.321/2005 is modified. The compensation awarded by the Tribunal is enhanced from Rs.1,62,000/- to Rs.2,62,000/-, inclusive of No Fault Liability with interest to be at the rate of 7% p.a. from the date of filing of petition till the date of realization of amount to be payable in terms of modified award.

D] The amount in terms of modified award shall be payable to respective appellants - claimants by respondent nos.2 & 3 jointly and severally..

E] Modified award be drawn accordingly.

F] The appeals are disposed of in above terms.

(V.L. ACHLIYA, J.)