

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

FIRST APPEAL NO.142 OF 2007

United India Insurance Co. Ltd.
Through its Divisional Manager and
authorised representative and signatory,
Ahmednagar Divisional Officer,
Market Yard, Ahmednagar

..Appellant

Vs.

1. Dashrath Bayaji Mane,
Age:54 years, Occ. Labourer,
2. Sou. Shashikala Dashrath Mane,
Age : 50 years, Occ. Nil,
r/o. Malewadi, Tq. Pathardi,
Dist. Ahmednagar
3. Mrs. Swarna Dnyaneshwar Jagtap,
Age : major, Occ. Transport and Agri.
r/o. Ganeshnagar, Lasalgaon,
Tq. Nipahad, Dist. Nashik
4. Bhagunath Sadashiv Jadhav,
Age : major, Occ. Agri and Transport
r/o. Dhamangaon, Tq. Niphad,
Dist. Nashik
(As per Court's order dt.05.10.2010
appeal dismissed against resp.no.4)

..Respondents

Mr. A.B.Gatne, Advocate for appellant
Mr. S.S.Jadhavar, Advocate for respondent no.1

**CORAM : R.G. AVACHAT, J.
DATE : NOVEMBER 15, 2021**

JUDGMENT :-

This is an insurance company's appeal, taking exception to the quantum of compensation awarded by the Motor Accident Claims Tribunal, Ahmednagar, on account of death in a vehicular accident. The amount of compensation awarded under the impugned award is Rs.Four Lakhs.

2. Mr.A.B.Gatne, learned counsel for the appellant-insurance company, would submit that the deceased was sleeping in the open and as such, it was contributory negligence. On the question of quantum, learned counsel would submit that the claim petition was filed by the parents of the deceased. There is no evidence about monthly income of the deceased. The accident took place in the year 2000. The notional income of the deceased would not have been more than Rs.2,000/- per month in those days. Since the deceased died bachelor, one half of his income ought to have been deducted towards his personal and living expenses. According to him, an excessive claim has been granted. He, therefore, urged for interference with the impugned award.

3. Mr.S.S.Jadhavar, learned counsel for respondent no.1, would, on the other hand, submit that due to illiteracy and for want

of funds, no appeal has been preferred for enhancement of compensation. The respondents/claimants can, however, defend the amount of compensation awarded under the impugned award. He, therefore, urged for dismissal of the appeal.

4. The evidence on record indicates that the deceased was ran over by a truck that was being taken in reverse direction. On due investigation, the truck driver has been charged for being responsible to the accident and consequential death. This Court has no reason to find it to be a case of contributory negligence.

5. On the question of quantum of compensation, the deceased was said to be a professional driver. For want of concrete evidence of income of the deceased, the Tribunal has rightly considered it notionally at Rs.3,000/-. True, the claim was filed by the parents of the deceased and the Tribunal, therefore, ought to have deducted one half of the income of the deceased towards his personal and living expenses. Close reading of the impugned judgment and award indicates that the Tribunal has not granted compensation on account of future prospects. Moreover, no amount has been awarded towards loss of estate, funeral expenses, loss of consortium and love and affection. It is reiterated that the

respondents/claimants can point out that the Tribunal ought to have granted compensation under these heads as well. In totality, the compensation awarded under the impugned award is justified.

6. The Constitution Bench judgment of the Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680** was not in the field when the impugned award was passed. The Tribunal ought to have granted compensation on account of future prospects and under other conventional heads as well. If one half of the income of the deceased is deducted towards his personal and living expenses, 40% is to be added towards future prospects and if the compensation is awarded under other conventional heads, the quantum of compensation awarded under the impugned award would be justified. The same is just and reasonable one.

7. In the circumstances, no case is made out for interference with the impugned judgment and award. In the result, the appeal fails and is dismissed.

8. The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

[R.G. AVACHAT, J.]

KBP