

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

FIRST APPEAL NO. 908 OF 2011

1. Vijay s/o Dilip Kudke
Age: 22 years, Occu: Student,
2. Asha w/o Dilip Kudke
Age: 43 years, Occu: Household
3. Jamnabai w/o Bhagwanrao Kudke
Age: 73 years, Occu: Nil,
All R/o. Kanchanpur,
Tq. & Dist. Aurangabad

... Appellants
(Original claimants)

Versus

1. The United Insurance Company Ltd.,
Beed, through its Divisional Office,
Osmanpura, Aurangabad
2. Chandra w/o Dilip Ubhale
Age: 42 years, Occu: Business,
R/o Kanara Bank Colony,
Beed, Tq. & Dist. Beed
3. Ashok Haribhau Khedkar
Age: 28 years, Occu. Driver
R/o. Pangri Road, Beed,
Tq. & Dist. Beed
4. I.C.I.C.I.,
Lombard Insurance Company,
Aurangabad
5. Lalitabai w/o Bhagwanrao Autade
Age: Occu: Business,
R/o. Selu Amba, Tq. Ambajogai,
Dist. Beed

6. Arjun Manikrao Gurkhel
Age: 32 years, Occu: Driver,
R/o. Devla, Tq. Ambajogai,
Dist. Beed.

... Respondents

....

Mr. H. P. Jadhav, Advocate for appellants
Mr. S. V. Kulkarni, Advocate for respondent No.1
Mr. S. S. Patil, Advocate for respondent No.4

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CORAM : R. G. AVACHAT, J.

DATED : 24th NOVEMBER, 2021

PER COURT :-

. This is an appeal for enhancement of amount of compensation granted by the Motor Accident Claims Tribunal on account of death in vehicular accident. The claim petition was filed by the widow, son and mother of the deceased – Dilip. The Tribunal, on appreciation of evidence in the case, held it to be a case of contributory negligence and awarded compensation of Rs.11,45,020/- with 7% interest thereon. The Tribunal held the deceased to have been contributory negligent to the extent of 20%. Since it was an accident involving two vehicles, the owners, both the drivers and insurers of both the vehicles have been held to be equally liable to pay the amount of compensation (40% each) of the total amount of compensation worked out by the Tribunal.

2. Since the appeal is only for enhancement of amount of compensation, the facts relating to how the accident did take place, the apportionment of liability pursuant thereto is not relevant for deciding the appeal and therefore the same is not adverted to.

3. Learned Advocate for the appellants/claimants would submit that the deceased was serving with the Maharashtra State Road Transport Corporation (MSRTC). The appeal being continuation of the original claim for compensation, needs to be governed by directions of the Apex Court in the case of ***National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680***. He, therefore, urged for grant of compensation, accordingly.

4. Learned Advocates for the respondents would, on the other hand, submit that just and reasonable compensation has been awarded and therefore there is no reason to interfere with the impugned award.

5. When the impugned award was passed, the Apex Court judgment in the case of ***Pranay Sethi*** (supra) was not in the field. The appeal for enhancement of compensation being continuation of original claim petition, therefore, needs to be governed by the

directions of the Apex Court. The observations of the Apex Court in the case of ***Pranay Sethi*** (supra) are as under:

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.*

6. Admittedly, the deceased was serving with MSRTC at a monthly pay of Rs.10,263/-. He was in permanent employment. The deceased died at the age of 47 years. Therefore, there would be addition of 30% of his established income towards future prospects.

7. The Tribunal has awarded the compensation as under:

(i)	Annual income of the deceased	Rs.1,23,156/-
(ii)	1/3 deduction towards personal and living expenses	- Rs. 41,052/-

		Rs. 82,104/-
(iii)	Since the deceased was 47 years of age, multiplier of 11 was applied (82,104 X 11)	Rs. 9,03,144/-
(iv)	On account of love and affection Rs.10,000/- and towards funeral expenses Rs.2000/- (10,000 + 2,000)	+ Rs. 12,000/-
(v)	Additional Rs.10,000/- has been awarded	Rs. 10,000/-

(vi)	Rs.2,19,876/-[medical expenses not paid by the MSRTC]	Rs. 2,19,876/-
	Total	Rs.11,45,020/-

Thus, the Tribunal has awarded compensation of Rs.11,45,020/-- with interest @ 7% p.a. from the date of petition to the date of deposit/payment of the amount.

8. This Court, therefore, reworks out the amount of compensation in terms of the judgment in the case of *Pranay Sethi* (supra) as under :

(i)	Annual income of the deceased	Rs.1,23,156/-
(ii)	1/3 deduction towards personal and living expenses	- Rs. 41,052/-
		Rs. 82,104/-
(iii)	Addition of 30% towards future prospects (82,104 X 30% i.e. 24,631/-)	Rs. 1,06,735/-
(iv)	Since the deceased was 47 years of age, multiplier of 11 is applied (1,06,735 X 11)	Rs. 11,74,085/-
(v)	On account of love and affection Rs.40,000/- each and towards funeral expenses Rs.30,000/- added (1,20,000 + 30,000)	Rs. 1,50,000/-
(vi)	Rs.2,19,876/-[medical expenses not paid by the MSRTC]	Rs. 2,19,876/-
		Rs.15,43,961/-
(vii)	20% amount is deducted towards contributory negligence. (15,43,961 – 20% i.e. - 3,08,792)	= Rs. 12,35,169/-
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9. In view of the above, the appeal succeeds. The same is allowed in terms of following order.

ORDER

- (i) The appeal is allowed.
- (ii) The amount of compensation awarded by the Tribunal is enhanced from Rs. 11,45,020/- to Rs. 12,35,169/-.
- (iii) There is no change in the rate of interest awarded on the amount of compensation.
- (iv) The amount which has already been paid or deposited by the respondent – Insurance Company, be given set off.
- (v) The amount to be paid to the appellants, shall be deposited with this Court within a period of two months herefrom.

[R. G. AVACHAT, J.]

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