

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

FIRST APPEAL NO. 101 OF 2002

1. Ratnamala w/o Manik Waghmare
Age: 27 yrs, Occ: Household
R/o Behind Shani Temple,
Parbhani, Tq. & Dist. Parbhani
2. Deepak w/o Manik Waghmare
Age: 10 yrs. Occ. Education
3. Sunil s/o Manik Waghmare
Age: 8 yrs. Occ. Education
4. Sheetal d/o Manik Waghmare
Age: 6 yrs, Occ. Education
5. Swapnil s/o Manik Waghmare
Age: 2 yrs. Occ: Nil

... Appellants
(Orig. Claimants)

(Appellants Nos. 2 to 5 are minors
u/g of their mother i.e. Appellant No.1.)

Versus

1. Ganpat s/o Bhagwat Hale
Age: 30 yrs., Occ: Business/Driver,
R/o Hanumant Javalga,
Tq. Chakur, Dist. Latur
2. The United India Insurance Co.
Near Panchwati Hotel, Latur
through it's Branch Manager,
Station Road, Parbhani
(Police No.02482 Valud upto 30.11.99)

... Respondents
(Orig. Respondents)

Mr. J. V. Deshpande, Advocate for appellants (absent)
Mr. Mukul Kulkarni, Advocate for appellants – to assist the Court
Shri S. G. Chapalgaonkar, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 12th OCTOBER, 2021

J U D G M E N T :-

. This is an appeal for enhancement of compensation granted by the Motor Accident Claims Tribunal, Parbhani (Tribunal) in Motor Accident Claim Petition No. 218 of 1999. The appellants are the original claimants in the said petition. They are legal representatives / heirs of deceased Manik, who died in accident involving motor vehicle, Truck (MWA-6669) on 06.05.1999. The claim was preferred against the owner and insurer of the vehicle involved in the accident. The Tribunal after considering notional income of the deceased at Rs.50/- per day, awarded total compensation of Rs.2,00,000/- (Rupees Two Lakh) with interest @ 9% p.a.

2. It was the case of the appellants/claimants that the deceased was a driver by profession. He would earn Rs.3,000/- per month as salary besides daily bhatta. According to the learned

Advocate for the appellant, due to untimely death of Manik, his widow and four minor children suffered incalculable loss. It became difficult for them to make both the ends meet. The learned Advocate urged for grant of compensation in view of directions of the Apex Court in the cases of *National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680* and *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – (2018) 18 SCC 130*.

3. Learned Advocate for the appellant remained consistently absent to work out this appeal. Since it is an appeal for enhancement of compensation awarded on account of death in motor vehicle accident, this Court is under obligation to grant just and reasonable compensation. The Court did not find it fit to dismiss the appeal in default, learned Advocate Shri Mukul Kulkarni was therefore appointed to assist the Court in this matter. He rendered his able assistance as usual.

4. Learned Advocate Shri S. G. Chapalgaonkar would, on the other hand, submit that there was no concrete evidence about income of the deceased. The widow of the deceased herself admitted

that he would work on daily wages. Occasionally, he would get job as a driver. According to the learned Advocate, both the judgments of the Apex Court in the cases of ***Pranay Sethi and Magma*** (*supra*) were not in the field when the award was passed. The quantum of compensation awarded by the Tribunal is just and reasonable considering cost of living and value of rupee of the year 1999 when the accident took place. He, therefore, urged for dismissal of the appeal.

5. The appeal is a continuation of proceedings in a suit or claim petition. Pending the appeal, the aforesaid two judgments of the Apex Court came to hold the field. The present appeal would therefore necessarily be required to be governed in the light of observations in the aforesaid judgments.

6. The deceased had held a driving licence to drive Light Motor Vehicle, non-transport. It, therefore, has to be assumed that the deceased must have been serving as a driver as has been averred by the claimants. The widow of the deceased, however, admitted that he would earn Rs.50/- per day. There is no concrete evidence as regards income of the deceased. The accident dates back to the year

1999. The Tribunal, therefore, was justified in assuming income of the deceased at Rs.1500/- per month. The Tribunal has, however, not granted any compensation towards future prospects. The age of the deceased was 30 when he breathed his last. 40% of monthly income would be considered for grant of future prospects. Thus, his monthly income would come to Rs.2100/-. The annual income would be Rs.25,200/-. The number of dependents was six (widow + four minor children). The Tribunal, therefore, ought to have deducted $\frac{1}{4}$ th of the annual income towards his personal and living expenses i.e. Rs.6,300/-. On such deduction, the annual loss of dependency would come to Rs.18,900/-. Applying multiplier of 16, the amount of compensation payable to the appellants-claimants comes to Rs.3,02,400/-.

7. The appellants being the widow and four minor children are granted a sum of Rs.40,000/- each towards loss of consortium, loss of love and affection, besides a sum of Rs.30,000/- towards funeral expenses and loss of estate. No interest however would be awarded on this amount for the period from the date of petition to the date of this order. In the result, the appeal partly succeeds. Hence, following order:-

ORDER

- (i) The appeal is partly allowed.
- (ii) The amount of compensation awarded by the Tribunal is enhanced to Rs.5,32,400/-.
- (iii) The rate of interest awarded by the Tribunal is scaled down from 9% p.a. to 7% p.a. and the same is awarded on the amount of compensation of Rs.2,30,000/- from the date of petition to the date of payment of the amount.
- (iv) If the amount of compensation awarded on account of loss of consortium, love and affection, funeral expenses and loss of estate is not deposited within a period of two months herefrom, the same shall carry interest 7% p.a. from the date of this order to the date of actual payment.
- (v) The amount shall be deposited before the Motor Accident Claims Tribunal, Parbhani.
- (vi) The Tribunal in-turn shall issue notice to the appellants – claimants and immediately pay them the amount of compensation.
- (vii) The Registrar (Judicial) of this Court is requested to ensure that the amount of compensation is paid to the appellants – claimants, immediately.

[R. G. AVACHAT, J.]