

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

FIRST APPEAL NO.882 2009

1. Mahmood Khan s/o. Chand Khan,
Age : 52 years, Occ. Nil,
r/o. Lota Karanja, Mominpura,
Aurangabad

- Appellant no.1 deleted
as per Court's order dated 01.08.2014

2. Afsari Begum w/o. Mahmood Khan,
Age : 50 years, Occ. Household,
r/o. Lota Karanja, Mominpura,
Aurangabad

..Appellants

Vs.

1. Pandharinath s/o. Dashrath Inamdar,
Age : 50 years, Occ. Business,
r/o. Near Savata Mandir, Phulambri,
Dist. Aurangabad
2. The New India Assurance Company Ltd.,
Through Divisional Manager,
Divisional Office, Aurangabad

..Respondents

Mr.S.U.Shaikh, Advocate h/f. Mr.Y.M.Khan, Advocate for appellant

Mr.B.V.Dhage, Advocate for respondent no.1

Mr.A.B.Kadethankar, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 31, 2021**

JUDGMENT :-

This appeal has been filed for enhancement of compensation granted under the award dated 01.08.2007 by learned Member, Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No.832 of 2006. The claim petition was filed by the parents of deceased – Masud Khan. It has been allowed granting them a sum of Rs.1,36,000/- (inclusive of no fault liability of Rs.50,000/-) with interest thereon at the rate of 6 per cent per annum, from the date of the claim petition to the date of realisation thereof.

FACTS:-

2. Deceased – Masud Khan was said to be a 27 years old son of the appellants. He was a professional rickshaw driver. On 22.10.2006 by 02.00 p.m., the deceased was plying auto-rickshaw bearing registration No.MH-16-B-6601 along Aurangabad - Jalna road. A jeep bearing registration no. MH-20-AA-616, driven in high speed, dashed against the auto-rickshaw of the deceased. As a result, Masud Khan died on the

spot. On due investigation of the crime, charge sheet was filed against the jeep driver. The appellants (parents of the deceased) filed a claim petition against the owner of the jeep and its insurance company. The Tribunal, after considering the evidence before it, partly allowed the petition, granting a sum of Rs.1,36,000/- with 6% interest thereon. For want of concrete proof of income of the deceased, the Tribunal considered his notional income at Rs.2,000/- per month and applied multiplier of 8. After deducting 1/3rd of the annual income of the deceased towards his living expenses, it worked out the compensation. The Tribunal granted Rs.3,000/- towards loss of love and affection besides Rs.2,000/- towards funeral expenses.

3. During pendency of this appeal, appellant no.1 – Mahmood Khan s/o. Chand Khan, father of the deceased, expired and therefore, his name was deleted from the appeal vide order dated 01.08.2014.

4. Heard learned counsel for the parties.

5. Mr.S.U.Shaikh, learned counsel appearing for the appellant, would submit that a very meagre amount of compensation has been granted by the Tribunal. He relies on a judgment of this Court in **First Appeal No.1305 of 2019 dated 26.09.2019 (Kavita wd/o Ravindra Gurnule and anr. Vs. Maharashtra State Roads Transport Corporation and ors.)**, to submit that Rs.6,000/- per month was considered to be the notional income of the deceased in that case. Learned counsel urged for granting compensation in terms of the directions of the Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and ors., (2017)16 SCC 680**.

6. Mr.A.B.Kadethankar, learned counsel for respondent no.2, would support the impugned award. According to him, there was no concrete evidence in proof of income of the deceased. The deceased died bachelor. He did not hold a valid and effective driving license to drive auto rickshaw at the relevant time.

7. I have considered the rival submissions. Perused the impugned award. The appellants/parents have lost their son,

the bread winner of the family. Admittedly, the deceased was owner of the auto-rickshaw. He was plying auto rickshaw when the accident took place. Same indicates his financial status. The Tribunal, therefore, ought to have considered at least Rs.100/- per day as his income. Considering the same, the annual income of the deceased comes to Rs.36,000/-.

8. In view of the above, the amount of compensation needs to be worked out in terms of the directions of the Apex Court in the case of **Pranay Sethi** (Supra), as under:-

Particulars		Figures in Rupees
Established income of deceased per annum (Rs.3,000/- per month x 12 months)	:-	36,000
Addition of 40% towards future prospects since deceased was self employed)	+ (plus)	14,400
		50,400
Deduction of 50% amount, as deceased died bachelor, towards personal expenses which deceased would have incurred for self had he been alive	- (minus)	25,200
		25,200
Applying multiplier of 17, amount of compensation on account of loss of dependency (Rs.25,200 x 17)	:-	428400

Addition on account of loss of estate and funeral expenses	+ (plus)	30,000
Addition towards love and affection	+ (plus)	15,000
Amount of compensation		4,73,400/-

9. In view of the above, the appeal succeeds in terms of the following order:-

- (i) The appeal is allowed.
- (ii) The respondents shall pay the appellant a sum of Rs.4,73,400/- with interest at the rate of 7 per cent per annum thereon, from the date of the claim petition till payment thereof, deducting the amount of compensation, which had already been paid to the appellant/claimant.

[R.G. AVACHAT, J.]