

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

FIRST APPEAL NO. 791 OF 2011

1. Sunita w/o Anil Patil
Age: 30 years, Occu: Household,
R/o Gajanan Nagar, Galli No.04,
Near Vaishnavi Provision, Dist. Aurangabad

2. Divyabharti d/o Anil Patil
Age: 9 years, Occu. Education
R/o Gajanan Nagar, Galli No.04,
Near Vaishnavi Provision, Dist. Aurangabad

3. Onkar s/o Anil Patil,
Age: 6 years, Occu. Education
R/o Gajanan Nagar, Galli No.04,
Near Vaishnavi Provision, Dist. Aurangabad

(Appellant no. 2 & 3 are minors and U/G of
mother – appellant no.1 r/o as above)

4. Kamalbai w/o Gangadhar Patil
Age: 67 years, Occ:Nil,
R/o Gajanan Nagar, Galli No.04,
Near Vaishnavi Provision, Dist. Aurangabad ... Appellants
(Orig.Claimants)

Versus

1. The Manager
The Akola Pravasi & Mal Vahtuk Co-op Society Ltd.,
A/c Dy. Commissioner,
Municipal Corporation, Aurangabad

2. Sunil s/o Tejrao Gade
age: Major, Occ: Driver,
r/o. Galli no.3, Sanjay Nagar,
Baijipura, Aurangabad,

At present c/o The Akola Pravasi & Mal
Vahtuk Co-op Society Ltd.
A/c Dy. Commissioner,
Municipal Corporation, Aurangabad

3. The Divisional Manager
The National Insurance Co. Ltd.,
Hajari Chambers, Station Road,
Aurangabad

... Respondents

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Mr. A. P. Khalekar, Advocate for appellants

Mr. Swapnil M. Mule, Advocate h/f Mr. R. V. Gore, Advocate for
respondent Nos. 1 and 2

Mr. S. P. Chapalgaonkar, Advocate for respondent No.3

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CORAM : R. G. AVACHAT, J.

DATED : 25th NOVEMBER, 2021

PER COURT :-

. Heard.

2. This is an appeal for enhancement of compensation
awarded by the Motor Accident Claims Tribunal on account of death
in vehicular accident.

3. The Tribunal considered the income of the deceased
notionally at Rs. 3,000/- per month. According to the learned
Advocate for the appellants the deceased was serving as a Watchman
with Government Engineering College, Aurangabad, at monthly pay

of Rs.5.797/-. His salary certificate is placed on record. The Tribunal, however, has not taken any cognizance thereof and therefore, the appellants-claimants were required to come in appeal. The learned Advocate urged for grant of compensation in terms of the Apex Court judgments in the case 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*.

4. The learned Advocate for the respondent – Company would, on the other hand submit that in spite of giving full opportunity to the claimants, they did not adduce evidence in proof of salary certificate, if any. The Tribunal, vide its speaking order, rejected the application moved by the claimants for adducing evidence. Such order has not been challenged and as such, has attained finality.

5. It is a claim for compensation on account of death occurred in vehicular accident. The Government Engineering College is a public office. The salary certificate issued by its office was placed on record. The Tribunal, either should have read it in evidence as it

is or permitted the appellants – claimants to produce evidence in proof of the same. Clause (1) of Section 105 of the Code of Civil Procedure permits to take exception to the interim orders in the appeal, which had not been taken exception to, independently. Clause (1) of Section 105 of the Code of Civil Procedure, reads thus:-

“105. Other orders. - (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.”

6. The salary certificate is a public document issued by the concerned official of the Governing Engineering College. The procedure of summary inquiry is postulated under the Motor Vehicles Act. This Court is therefore inclined to read the said salary certificate in evidence.

7. When the impugned award was passed, the aforesaid two judgments, ***Pranay Sethi*** and ***Magma***, (*cited supra*), were not in the field. The appeal is in continuation of the original proceedings, therefore, the amount of compensation is required to be re-worked out in terms of the directions of the Apex Court.

8. The salary certificate indicates the monthly salary of deceased was Rs.5,797/-. Rs.200/- is subtracted therefrom towards professional tax. Therefore, it comes to Rs.5,597/-. Since the deceased was around 30 years of age, 40% of his established salary would be added thereto towards future prospects. After adding 40% in his monthly salary, it comes to Rs.7,836/-. The annual salary of the deceased would come to Rs. 94,032/- (7836 X 12). Since the claimants are four in number, 1/4th of his annual income is deducted towards his personal and living expenses. As such, annual loss of dependency comes to Rs.70,524/- (94,032 – 23,508). As the deceased was in the age group of 30, the multiplier of 18 applies, in view of Apex Court judgment in the case of ***Sarla Verma (Smt) and others vs Delhi Transport Corporation and another – (2009) 6 SCC 121***, applying this multiplier, the amount of compensation comes to Rs.12,69,432/-. All the appellants – claimants are granted a sum of Rs.40,000/- each on account of loss of love and affection and loss of consortium. Besides it, a sum of Rs.30,000/- is awarded on account of funeral expenses and loss of estate. Therefore, the total amount of compensation comes to Rs.14,59,432/- (12,69,432+ 1,60,000+30,000).

9. The claimants shall not be entitled for interest *pendente lite* on the amount of Rs. 1,90,000/-.

10. In the result, the appeal is partly succeeds in terms of the following order:-

ORDER

- (i) The appeal is partly allowed.
- (ii) The amount of compensation awarded by the Tribunal is enhanced to Rs.14,59,432/-
- (iii) A sum of Rs.1,90,000/- shall not carry interest *pendente lite* (from the date of petition to the date of this order).
- (iv) Rest of the terms of the impugned award to stand unaltered.

[R. G. AVACHAT, J.]