

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

FIRST APPEAL NO. 2018 OF 2011

1] Sandip Dashrath Garje
Age: 21 years, Occu. Education

2] Pradeep Dashrath Garje
Age: 16 years, Occu. Education

All R/o : Surudi, Tq. Ashti,
Dist. Beed – u/g of appellant No.1

... Appellants
(Ori. Claimants)

Versus

1] Thiru K. Saminathan s/o K. S. Kuppusamy Goundar
Age Major, Occu. Business & owner of Truck
No.TN-33-AX-9898,
R/o 8, Ayyan Thottam, K. C. Palayam,
Tq. Perundurai, Dist. Erode, Tamilnadu-638052

2] Sundaram G. Gurunathan
Age Major, Occup. Driver,
R/o : 5/61C, Lakkampatty Periyahanda,
Post Mettur, Tq. & Dist. Selam,
Tamilnadu – 638052

3] The Manager
New India Assurance Co. Ltd., Nagpur,
Summons to be served to
Thr Branch Manager, Branch office
Ashiyana Building, Jalna Road, Beed,
Tq. & Dist. Beed.

... Respondents
(Ori. Respondents)

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Mr. Sachin S. Deshmukh, Advocate for appellants
Mr. A. G. Kanade, Advocate for respondent No.3

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CORAM : R. G. AVACHAT, J.

DATED : 12th AUGUST, 2021

PER COURT :-

. This appeal has been preferred for enhancement of compensation granted under the award dated 08.06.2011 passed by the Chairman, Motor Accident Claims Tribunal (M.A.C.T.) (for short 'the tribunal'), Beed in Motor Accident Claim Petition (M.A.C.P) No.168 of 2009.

2. The appellants are the siblings. They claimed compensation on account of death of their mother in the accident involving motor vehicles. The tribunal, after considering notional income of the deceased to be Rs.5,000/- per month, granted compensation of only Rs.2,00,000/- (inclusive of funeral expenses and loss of estate) with 18% interest thereon.

3. Heard.

Learned Advocate for the appellants would submit that the tribunal has awarded the compensation with the observations that the appellants/claimants would be attaining the age of 21 years

within a period of 2-3 years and thus they would cease to be the dependents of the deceased, had she (deceased) been survived. The learned Advocate, therefore, urged for grant of compensation in the light of a Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others – (2017) 16 SCC 680.

4. Learned Advocate for the respondent - insurance company would on the other hand support the impugned award.

5. In the same accident, the appellants-claimants lost their father as well. Both of them (appellants) were in the age group of 15-19 years when their parents died. Needless to state that they were the students by then. The tribunal although rightly assumed notional income of the deceased at Rs.5,000/- per month, did not make any addition thereto on account of future prospects. It also erred in observing that the dependency of the claimants would cease on their attaining the age of 21 years.

6. In Pranay Sethi's case (supra), it has been observed :-

“(a) Motor Vehicles Act (59 of 1988), SS. 166, 163-A and 168 – Compensation for death in motor accident – Liability of insurance company – Concept of ‘just

compensation' - Has to be determined on foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude.

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(c) Motor Vehicles Act (59 of 1988), SS. 166, and 163-A – Compensation for death in motor accident – future prospects – Deceased who was self employed or on fixed salary – Determination of income while computing compensation has to include future prospects.”

7. Let us therefore work out the amount of compensation to which the appellants are entitled to.

Considering the notional income of the deceased at Rs.5,000/-, her annual income comes to Rs.60,000/-. At the time of her death, deceased was 38 years of age. Multiplier of 15 has therefore to be applied. It comes to Rs.9,00,000/-. 40% thereof is added on account of future prospects i.e. Rs. 3,60,000/-. The total is Rs.12,60,000/-. 50% thereof is deducted towards expenditure the deceased would have incurred for self had she been survived. Thus, the amount of compensation on loss of dependency comes to Rs.6,30,000/-. On account of loss of love and affection a sum of Rs.40,000/- is granted in addition to Rs.40,000/-, which had already been granted by the tribunal towards funeral expenditure and loss of estate. Thus, the total amount of compensation to which the

appellants are entitled to is Rs.7,10,000/-. The tribunal has granted interest at the rate of 18% per annum. The same appears to be exorbitant. Percentage of interest is therefore reduced to 6%.

8. With this, the appeal is allowed in terms of following order :

ORDER

- (i) The First Appeal is partly allowed.
- (ii) The impugned award dated 08.06.2019 passed by the Charman, Motor Accident Claims Tribunal, Beed, in Motor Accident Claim Petition No. 168 of 2009, is hereby modified, holding the respondent Nos. 1 to 3 jointly and severally liable to pay the appellants a sum of Rs.7,10,000/- (Rupees Seven Lakh Ten Thousand) (inclusive of NFL amount) with 6% interest thereon from the date of petition to the date of realization of the amount.
- (iii) The amount of compensation be paid to the appellants, equally.

[R. G. AVACHAT, J.]