

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

FIRST APPEAL NO. 2027 OF 2009

Kalpana Dilip Dusane and others	... Appellants
Versus	
Sureshkumar Gurumukhdas and others	... Respondents

....

Mr. Mangesh M. Jadhav, Advocate h/f Mr. Subodh P. Shah, Advocate
for appellants

Mr. M. M. Ambhore, Advocate for respondent No.3

....

CORAM : R. G. AVACHAT, J.

DATED : 04th OCTOBER, 2021

PER COURT :-

. This is an appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal (Tribunal), Dhule, in Motor Accident Claim Petition No.732 of 2000 (Petition). A sum of Rs.2,62,000/- with interest @ 7.5% p.a. came to be awarded as compensation on account of death occurred in vehicular accident. The heirs/legal representatives of the deceased have therefore preferred this appeal.

2. Learned Advocate for the appellants/claimants would submit that the deceased was a businessman. He was expert in

Weights and Measures. The deceased would deal in sale and repairs of weight and measures. The deceased would pay income tax. He owned a car and the residential house. The same would indicate his financial status. The Tribunal has notionally considered the income of the deceased at Rs.2100/- per month and awarded meager compensation. Learned Advocate urged for enhancement of compensation considering his notional income at Rs.5,000/- per month. He also urged for grant of compensation under other heads in terms of the Apex Court judgment 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*.

3. Learned Advocate for respondent – Insurance Company would on the other hand submit that there are no income tax returns filed for the years next before the accident. The income tax returns filed on record the created documents with a view to earn more compensation. For want of there being concrete evidence of income of the deceased, the Tribunal has rightly considered notional income at Rs.21,00/- per month. Learned Advocate, therefore, urged for dismissal of the appeal.

4. The details of amount of compensation awarded by the Tribunal are as under.

Rs.2100/- per month notional income. 1/3rd thereof deducted towards personal and living expenses. It comes to Rs.1,400/-. Annual loss of dependency comes to Rs.16800/-. Applying the multiplier of 15 granted Rs.2,52,000/- towards loss of dependency plus Rs.5,000/- towards loss of consortium and equal amount towards funeral expenses.

5. While the impugned judgment and award was passed, the judgment of the Apex Court in the case of ***Pranay Sethi*** (supra), was not in the field. Since appeal is continuation of the original proceedings, the same needs to be governed by the directions of the Apex Court in the aforesaid judgment. Moreover, in the case of ***Magma*** (supra), the Apex Court has observed thus:-

“B. Motor Vehicles Act, 1988 – Ss. 168, 166 and 173 – Compensation for death in accident – Various heads of – Compensation towards “loss of consortium” - Word “consortium” - Meaning and scope - “Spousal consortium”, “parental consortium” and “filial consortium” - Explained – Parents losing their minor child or unmarried son/daughter in motor accident – Entitled to be awarded loss of consortium under the head of filial consortium”.

6. For want of concrete evidence about income of the deceased, this Court do not propose to interfere with notional income of Rs.2,100/- considered by the Tribunal for grant of compensation. However, 25% thereof would be added thereto on account of future prospects.

Considering the notional income of Rs.2500/- per month, annual income comes to Rs.30,000/-. Multiplier of 15 would be applied thereto. It comes to Rs.4,50,000/-.

7. On account of loss of consortium and love and affection, each of the claimants is awarded a sum of Rs.40,000/- (Rs.40,000 X 5 = Rs.2,00,000/-), while a sum of Rs.30,000/- is awarded for funeral expenses and loss of estate. The total compensation comes to Rs.6,80,000/- (Rs.4,50,000/- + 2,30,000/-).

8. Since compensation on account of loss of consortium and love and affection is granted in terms of the Apex Court judgment in case of *Pranay Sethi (supra)*, this Court is not inclined to grant interest on this amount from the date of petition to the date of this order.

9. The impugned award is therefore modified in aforesaid terms. In the result, the appeal succeeds.

10. The amount of compensation of Rs.2,62,000/- awarded by the Tribunal is enhanced to Rs.6,80,000/-. However, interest @ 7.5% p.a. from the date of petition to the date of deposit of the entire amount is awarded only on Rs.4,50,000/-. In case, the respondent – Insurance Company fail to deposit the entire amount within a period of two months from today, it shall carry interest @ 6% p.a. from the date of this order to the date of payment thereof on Rs.2,30,000/-.

11. The First Appeal is allowed in above terms.

[R. G. AVACHAT, J.]